

Reference: 20210503

1 December 2021



Dear 

Thank you for your Official Information Act request, received on 27 October 2021. You requested the following:

The OIA 20210287 from Treasury says on p160 that Rio Tinto proposed exploring an environmental restoration account similar to IRD mechanism (and in contrast to Crown's proposed balloon payment) to achieve remediation and transmission relief aims

This notes various unanswered questions about how this would work

RNZ requests Tsy advise:

- 1. whether this has been looked into*
- 2. and with what result*
 - a. including any answers to the questions about the source and quantum of contributions, scope of account, priority to apply funds*

Questions:

- 1. Is TSY aware of any developments that alter when the smelter might close or significantly alter operations?*
- 2. Is TSY aware of any developments with stakeholders under which any assets related to the smelter are transferred?*

The OIA shows –

- Rio told TSY that NZAS 'has deposited significant funds into a Crown remediation fund'*
 - o PIs outline what these 'significant funds' are, how much, and for what*
- And*
 - That TSY asked Rio "who holds the current environmental remediation bond" and what are the conditions on returning it?*
 - o PIs outline what this bond is, how much, who holds it, and what are those return conditions*

Information being released

Please find enclosed binder 20210320 and binder 20210451. The binders include the information that you have requested, as outlined below, as well as other information that has been released previously.

As you mention in your request, previous releases included information regarding the proposal for an “*environmental restoration account*”. This was raised in the course of negotiations between the owners of New Zealand Aluminium Smelters (NZAS) and the Crown. The Treasury’s analysis of this proposal is included in the document ‘*Treasury Report: Project 14: Confirming Objectives and Next Steps*’. Negotiations were subsequently deferred as outlined in ‘*Treasury Report: Project 14: Update on Negotiations*’. Binder 20210320 is enclosed and includes both reports, as well as additional information that has previously been released.

You asked if the Treasury is “*aware of any developments that alter when the smelter might close or significantly alter operations*”. This is addressed in the document ‘*Aide Memoire: Update on New Zealand Aluminium Smelters*’ which is in binder 20210451 (enclosed).

We are not aware of any recent information that is relevant to your question about “*developments with stakeholders under which any assets related to the smelter are transferred*”. The document ‘*Treasury Report: Project 14: Update on Negotiations*’, in binder 20210320, does contain information from the beginning of this year on a repurposing working group convened by Rio Tinto to coordinate views about how to transition the site and any available assets into appropriate future uses.

You asked about the “*current environmental remediation bond*”, “*what this bond is, how much, who holds it, and what are those return conditions*”. NZAS indicated to the Crown negotiating team in October 2020 that they had deposited approximately \$47 million in an Environmental Restoration Account with Inland Revenue, pursuant to the Income Tax Act 2007. The Act provides further detail on the conditions which apply to Environmental Restoration Accounts and can be found online [here](#).

I have decided to release the documents in the binders referred to above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons,
- names and contact details of officials, under section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting Ministers, members of government organisations, officers and employees from improper pressure or harassment,
- advice still under consideration, section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials,
- certain sensitive advice, under section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions,

- commercially sensitive information, under section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

Information to be withheld

There are additional documents covered by your request that I have decided to withhold in full under the following sections of the Official Information Act, as applicable:

- commercially sensitive information, section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information, and
- legally privileged advice, section s 9(2)(h) – to maintain legal professional privilege.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Jean Le Roux
Manager
Regions, Enterprise and Economic Development

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Reference: T2021/1997 CO-6-2

Date: 5 August 2021

To: Minister of Finance
(Hon Grant Robertson)

Minister of Energy and Resources
(Hon Dr Megan Woods)

Minister for the Environment
(Hon David Parker)

Deadline: None
(if any)

Update on New Zealand Aluminium Smelters

This aide memoire updates you (the Tiwai Group Ministers) on developments regarding New Zealand Aluminium Smelters (NZAS) since we last provided a briefing on 29 April 2021.

Exchange of letters with Rio Tinto regarding remediation commitments

Jakob Stausholm, the Chief Executive of Rio Tinto, sent a letter to the Prime Minister on 27 May 2021. The letter outlined Rio Tinto's remediation commitments, which reflect what Ivan Vella (Chief Executive, Aluminium) verbally advised you on 6 May 2021. Rio Tinto committed to:

- relocating the Taha Ouvea stored at Invercargill locations to Tiwai Point, as space allows, and taking full funding responsibility for this material;
- undertaking to remove and process the buried Haysom's dross, rather than relying on the Government indemnity; and
- removing all spent cell lining (SCL) from the Tiwai peninsula at closure, as they indicated earlier in 2021.

Minister Parker responded to Ivan Vella on 2 July 2021, on behalf of Tiwai Group Ministers. The response welcomed these commitments and asked for more details, specifically regarding the commitments to take full funding responsibility for the Ouvea and the removal of the SCL.

Ivan Vella replied on 21 July 2021 and indicated that Rio Tinto:

- has relocated all of the Mataura Ouvea and is progressing work to remove other material from locations around the region, with the expectation that another 4,000 tonnes will be relocated from throughout Invercargill by the end of September 2021;
- has provided draft documents to the Ministry for the Environment to unwind previous funding arrangements for the removal and processing of the Mataura Ouvea;
- has secured, or is in the process of securing, various commercial agreements to export the SCL, with 4,000 tonnes of material prepared and awaiting permit for export;
- is continuing to investigate ways to increase the rate of SCL removal, including discussions for the establishment of an on-site processing facility; and
- s9(2)(b)(ii)

NZAS briefed the Southland Mayoral Forum in July

NZAS provided an in-person briefing to the Southland Mayoral Forum in July 2021, with closure planning timing remaining unchanged. They reiterated their commitment to remove SCL from the site.

A significant remaining concern is how Rio Tinto will deal with the residual waste in the existing unlined landfill, located on the Tiwai peninsula. The Crown has sought specific commitments from Rio Tinto, for example, moving the landfill material to a new site which meets contemporary standards.

However, while Rio Tinto has committed to removing and processing the buried Haysom's dross, they have only said that they will explore options for the disposal of residual waste. At the July briefing, they indicated that they are looking at treatment options for other hazardous landfill material (including asbestos and carbon).

At this briefing, NZAS also said that they have identified soil and groundwater contamination at the smelter site, particularly in drain sediments. The soil contamination is mostly fluoride associated with SCL storage sites, while groundwater sampling has identified exceedances for aluminium and fluoride.

Environment Southland is in a procurement process to set up a technical support and project management structure to implement site environmental monitoring and management requirements.

The Ministry for the Environment is negotiating with Rio Tinto to remove existing Crown indemnities

In line with statements made by Rio Tinto in correspondence with the Prime Minister to take full funding responsibility for the Taha Ouvea, Rio Tinto has provided the Ministry for the Environment with draft documentation relating to the funding and indemnity arrangements for this material.

s9(2)(h)

A University of Auckland survey found recent coastal erosion at Tiwai Point has increased

A University of Auckland survey found that the distance between the concrete pad containing the SCL and where the sand dunes meet the beach has reduced by approximately 35 meters since 2013 (from 110 meters to 75 metres). The pad is within the coastal management area where strict Resource Management Act (RMA) rules apply. However, the original pad was constructed prior to the RMA and the replacement was permitted five years after the RMA was introduced.

NZAS is also undertaking a third-party review of two independent reports they commissioned, which apparently indicated that the landfills located at Tiwai Point would be secure for the next century, but not beyond.

NZAS' profitability has improved significantly

Prices for aluminium recently reached 10-year highs and New Zealand energy analysts estimate that NZAS' EBITDA¹ has increased to \$491m in the last year, compared to - \$11m for July 2020. This indicates an improvement to the smelter's annualised earnings base of around \$0.5bn.²

Market analysts have a positive outlook for the aluminium market. This is due to pandemic-driven demand, as well as supply downsides driven by the Chinese Government's energy and pollution controls on new aluminium manufacturing facilities.³

We understand that NZAS is considering restarting potline 4, which was closed in 2019.

s9(2)(b)(ii), s9(2)(g)(i)

1. Earnings Before Interest, Taxes, Depreciation, and Amortization

2. NZAS' profitability has contributed to Rio Tinto Group's record profit for the first half of 2021, with an announced dividend of US\$9.1b for this period. The company is on track for its most profitable year ever.

3. China is the largest producer and consumer of aluminium.

There is a good prospect the smelter will continue to operate beyond 2024

While NZAS' electricity supply contract with Meridian ends in December 2024, in conjunction with its announced closure, we assess that there is a good prospect that the smelter will continue to operate beyond that date if the outlook for the aluminium market remains sufficiently positive.

Rio Tinto's decision to close the smelter in December 2024 will be a commercial decision involving consideration of the necessary resource and discharge consents. s9(2)(j)

NZAS is aiming to complete its Preliminary Closure Study by the end of 2021. Its Final Closure Study is intended for 2023, with Closure Execution to commence following the cessation of operations in December 2024. When asked at the Mayoral Forum about the possibility of the smelter operating beyond 2024, the company indicated that a final decision would be needed before December 2022.

The implications of NZAS' ongoing operation for climate budgets

In its analysis, the Climate Change Commission identified risks to achieving its recommended emissions budgets (2022-2025, 2026-2030, 2031-2035), one of which is uncertainty regarding the smelter's operations beyond 2024.

The implications of NZAS operating beyond 2024 are complex and dynamic. For example, there is a risk that smelter operations beyond 2024 would increase emissions of CO_{2e} above the Climate Change Commission's projected transition pathway. The Climate Change Commission suggested that, under this scenario, there would be additional emissions in each of the three budget periods of 2 million tonnes CO_{2e}, 5.6 million tonnes CO_{2e} and 5 million tonnes CO_{2e}, respectively. This is because smelter closure assumes that more emissions-intensive electricity production will be taken off-line due to Manapouri's surplus supply entering the grid.

Alternatively, if a future user is able to use Manapouri's electricity, for example, for green hydrogen production or a data centre, then more emissions-intensive electricity production is unlikely to be taken off-line, as supply and demand will generally have remained unchanged. Such alternative uses may bring other benefits, such as additional tax revenue or attracting new skills.

One of the key and urgent elements of the Climate Change Commission's policy recommendations was to "Develop a national energy strategy to decarbonise the energy system and introduce measures to make sure the electricity sector is ready to meet future needs in a way that ensures access to affordable, secure, low-emissions electricity". Such a national energy strategy could incorporate an assessment of the policy settings relevant to NZAS to ensure the Government is able to achieve its climate and energy goals.

Electricity Authority review of competition in the wholesale market, including Meridian's Tiwai contract

The Electricity Authority has advised that it is reviewing competition in the wholesale spot and forward markets from 2018 to early 2021. The Electricity Authority will investigate "the Tiwai deal, the market settings that facilitated it and the effect of the deal on the investment environment". The segmentation of prices between Tiwai and the rest of New Zealand raises the possibility that electricity might not be being directed to consumers with the greatest willingness to pay.

Green hydrogen is being actively discussed in several contexts

Green hydrogen development will require capital investment, resource consents and other approvals for relatively novel technology at scale. Stakeholder perceptions about the timing and complexity of developing hydrogen energy, potentially to substitute the smelter's demand, continue to require careful management.

Documents released by the Ministry for Business, Innovation and Employment (MBIE) under the Official Information Act have generated interest about the timing of potential hydrogen development at the Tiwai Point site. Media coverage has suggested that the power used by the smelter could be diverted to hydrogen in 2023/2025.

s9(2)(f)(iv), s9(2)(i)



Murihiku Regeneration, Meridian and Contact are also exploring green hydrogen development in Southland

Murihiku Regeneration and Fortescue Future Industries announced on 2 August 2021 that they have signed a collaboration agreement to develop a large-scale green hydrogen plant in Southland and aim to achieve production in 2025. The project is subject to an initial assessment process and investment decision.

Contact and Meridian are working on the Southern Green Hydrogen Project to explore the possibility of producing green hydrogen in Southland. The project is in the feasibility phase, and includes:

- A market scan to assess New Zealand's potential role in the emerging global hydrogen economy – this found global demand forecasts for green hydrogen are high. However, it found that hydrogen is expected to be more expensive than conventional fossil fuel energy in the medium-term and suggested government support would be required to bridge this price difference.
- A feasibility study on the technical and economic aspects of constructing and operating a green hydrogen facility.
- A registration of interest (ROI) process, for parties to purchase up to 600MW of either renewable electricity to produce green hydrogen, or the equivalent volume of green hydrogen from 2025. The information will be used to inform the high-level business case for producing green hydrogen.

- A study on operating a green hydrogen plant for dry-year response, which will investigate the costs and benefits of reducing production during dry years to mitigate dry-year risks to the electricity system.

MBIE will publish a Southland Just Transitions document in October 2021

MBIE's Just Transitions Partnerships team have worked with iwi and local government to establish an interim project oversight group and supporting secretariat group. The purpose of the oversight group is to provide co-ordinated support for the delivery of transition planning in Murihiku.

The team finished the last of three stakeholder engagement workshops in July. The outputs of this process have been collated and signed-off by the interim project oversight group. The team are conducting further engagements in August and September and intend to have a document ready for public release in October 2021.

Taylor Farr, Graduate Analyst, Regions, Enterprise and Economic Development, s9(2)(k)
s9(2)(k)

Jean Le Roux, Manager, Regions, Enterprise and Economic Development, s9(2)(k)
s9(2)(k)

20210320

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Treasury Report: Issues and options relating to the NZ Aluminium Smelter closure

Date:	23/07/2020	Report No:	T2020/2559
		File Number:	SH-11-5-1

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	<p>Indicate whether you would like further advice from officials on options to subsidise the New Zealand Aluminium Smelter's transmission costs.</p> <p>Refer this briefing to the Minister for the Environment, the Minister of Economic Development and Minister for Conservation.</p>	Consider this briefing before your meeting with Rio Tinto executives on Friday 24 July 2020.
Hon Dr Megan Woods Minister of Energy and Resources		

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
George Wibberley	Senior Analyst, Transitions, Regions, and Economic Development	s9(2)(k)	N/A (mob) ✓
Sam Grayling	Acting Manager, Transitions, Regions, and Economic Development		N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury.

Refer this briefing to the Minister for the Environment, the Minister for Economic Development, and the Minister for Conservation.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Issues and options relating to the NZ Aluminium Smelter closure

Executive Summary

Rio Tinto has announced that it plans to close the New Zealand Aluminium Smelter (NZAS) at Tiwai Point by August 2021.

You are meeting with Rio Tinto on Friday 24 July 2020. We recommend that you use this as an opportunity to better understand their position regarding the closure and factors driving this decision. A delayed closure could allow more time for workforce, remediation and economic transition planning, although these benefits would need to be weighed against the costs of additional Government support that Rio Tinto might request in return.

If you are interested in providing Crown support to facilitate a delayed closure, you could seek to understand any factors that would inform this decision. s9(2)(j)

Investigations are currently underway to determine the legal liability for site remediation.

Perceived high electricity and transmission costs are two significant factors affecting the closure decision. However, Rio Tinto's long term strategy may still result in a closure of smelter operations, even if these issues can be addressed.

Meridian has been undertaking commercial negotiations with NZAS since the announced closure in an attempt to offer NZAS lower electricity costs in order to remain open for longer. Meridian indicates it has offered NZAS a revised, more commercially attractive offer.

The smelter anticipates a reduction in transmission costs under the Electricity Authority's Transmission Pricing Methodology (TPM) process which is likely to eventuate in 2023 at the earliest.

The Electricity Authority could also reduce NZAS' transmission costs through a change in the prudent discount rule, but this, under current advice from the Electricity Authority, is a complex approach which may cause delays to the implementation of the TPM and is unlikely to achieve cost reductions until April 2022.

The Government has limited influence in the commercial arrangements between NZAS, Meridian and Transpower. Shareholding Ministers do not have the ability to direct Transpower regarding the amount it charges NZAS. The first best option is for Meridian Energy to reach a commercial arrangement. However, this does not address NZAS remaining concerns about transmission pricing.

In the absence of a prudent discount, Ministers could reduce the smelter's transmission prices in advance of any reduction achieved under the revised TPM, either through:

- Making a payment directly to NZAS to offset part of its transmission costs,
- OR
- Entering into a contract with Transpower under section 7 of the State Owned Enterprises Act;

Conditions could be attached to any offer from Government to NZAS, including the duration of operations, retained employment, and remediation responsibilities and activities. Rio Tinto's position on these matters is unclear.

Alternate future uses of the site have been proposed, but none are immediately implementable and a role for government to become involved directly in a commercial transaction, is likely to be limited.

We consulted officials at the Ministry for the Environment (MFE) and the Ministry of Business, Innovation and Employment (MBIE) during development of this advice.

Recommended Action

We recommend that you:

- a. **Note** that you can use your meeting with Rio Tinto on Friday 24 July 2020 to better understand their decisions for closing the smelter, whether there are conditions which may achieve a closure over a longer timeframe, and any factors that would influence this decision;
- b. ^{s9(2)(j)} 
- c. **Note** that Meridian has been undertaking commercial negotiations with NZAS since the announced closure in an attempt to offer NZAS lower electricity costs in order to remain open for longer and the first best solution is for Meridian and NZAS to reach a commercial solution;
- d. **Note** that Government has limited influence in the commercial arrangements between NZAS, Meridian and Transpower and no direct powers to influence change in the current prudent discount rule;
- e. **Note** that a delayed closure, with any Crown support, should be premised on Rio Tinto fulfilling certain conditions, such as workforce retention and site remediation.
- f. **Indicate** whether you would like further advice from officials on options to subsidise the smelter's transmission costs;
- g. **Refer** this briefing, in your capacity as policy Ministers (rather than shareholding Ministers), to:

The Minister for the Environment,

Refer / not refer

The Minister of Economic Development, and

Refer / not refer

The Minister for Conservation

Refer / not refer

^{s9(2)(k)} 

Sam Grayling
**Acting Manager,
Transitions, Regions, and
Economic Development**

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Treasury Report: Issues and options relating to the NZ Aluminium Smelter closure

Purpose

You have the opportunity to discuss a delayed closure of the New Zealand Aluminium Smelter

1. On 9 July 2020 New Zealand Aluminium Smelter (NZAS) announced that the Tiwai Point aluminium smelter (smelter) would close and cease operations in August 2021.
2. You are meeting with representatives of Rio Tinto, NZAS majority owners, to discuss the closure and the prospect of a delayed closure, potentially over three to five years. Biographies of the meeting attendees are included in Annex 1. The Japanese Sumitomo Group owns a minority stake in NZAS and is not attending the meeting.
3. We recommend that you test Rio Tinto's appetite for delaying the closure, what they would be looking to receive for such a delay (presumably reduced transmission prices) and whether they are willing to accept conditions regarding workforce retention and site remediation in exchange for any additional Crown support.
4. We have consulted with officials at the Ministry for the Environment (MFE) and the Ministry of Business, Innovation and Employment (MBIE) during development of this advice.

Effects of the closure and the potential objectives of a delayed closure

The smelter's closure in 14 months will have significant workforce, infrastructure and economic impacts

5. The economic impact of the closure will be significant for Southland, given that NZAS contributes \$406 million to the Southland economy (6.5 per cent of Southland's GDP and roughly 0.12 per cent of New Zealand's GDP) and spends \$418 million in New Zealand annually.
6. NZAS currently directly employs or contracts just under 1,000 people in Southland. Venture Southland has reported that there are at least 52 businesses that are key suppliers for Tiwai point and 1100 people are employed 'upstream' of NZAS in suppliers such as engineering and metal product manufacturing.
7. If NZAS is to close, then a phased closure (over three to five years) would be advantageous for employees, generators, infrastructure and the New Zealand economy.

A delayed closure could allow more time for workforce, remediation and economic transition planning, although these benefits would need to be weighed against the costs of additional Government support that Rio Tinto might request in return.

8. There are potential benefits from NZAS undertaking a slower closure, as this will enable:
 - The continued employment of NZAS personnel at the site, and the flow on impacts this has for related employment and industries,

- Remediation responsibilities to be clarified, and potential remediation activities to be started, as the smelter continues to operate,
 - Sufficient time to enable a Just Transition process for Southland, including assessment of alternate uses for the smelter site and surplus electricity, and
 - Necessary transmission infrastructure improvements to ensure efficient utilisation of the energy produced by Manapouri.
9. However, the extent of any benefits is uncertain until we get more information on NZAS' current plans for closure and site remediation. Any benefits would only materialise if Rio Tinto can be influenced to adapt their closure plans further to meet Government's objectives, which may require some kind of Government support in return. The potential benefits of a delayed closure would need to be carefully weighed against the costs associated with additional Government support.

Electricity, transmission and aluminium prices all affect Rio Tinto's closure decision

Meridian has been undertaking ongoing commercial negotiations with NZAS

10. Rio Tinto has long contended that NZAS is one of the highest cost smelters in the world and to remain competitive its electricity prices need to reduce significantly. Meridian Energy and Contact Energy have been negotiating with the smelter to offer a "better" price deal.
11. Meridian has stated publically that the four-year deal it offered on power prices would deliver a \$50 million cost saving to the smelter in its first year, rising to between \$60 million to \$70 million in subsequent years. Meridian's Chief Executive commented this deal would bring the smelter's power costs "down to the mid-point for smelters globally". Meridian has stated publically that this offer was rejected.
12. Meridian has subsequently confirmed to officials that it has now made a revised offer. We are not aware of the details but we are told that the offered price is "eye wateringly good" (in Meridian's words). In Meridian's view the final missing piece of the puzzle is now only transmission pricing.

Transmission pricing is a key issue for a delayed closure

13. Reducing its transmission costs is the other significant issue for the smelter. While the smelter anticipates a cost reduction under the Electricity Authority's Transmission Pricing Methodology (TPM) process. We are informed this is unlikely to be implemented until 2023 and risks be further delayed by court action. The TPM review has taken over a decade, and during this time there has been commentary that the smelter pays more than its fair share for transmission.
14. The Electricity Authority (Authority) is responsible for the prudent discount rules over which Ministers have no direct influence. Some stakeholders have lobbied for a change in the prudent discount rule (within the Electricity Code) to allow NZAS to apply for a reduction in its transmission costs. The current prudent discount rules have criteria which the smelter is extremely unlikely to meet, and so it has never applied. Such a rule change is also unlikely to be achievable quickly, as:

- s9(2)(ba)(i)

- The normal process for developing and agreeing rule changes also takes considerable time. It would likely take Transpower several months to develop a new prudential rule, and the Authority would require a similar time to agree and codify the change in the electricity rules. For NZAS to benefit from any rule change, they would need to apply by June 2021 for revised prices to apply from April 2022. This is a consequence of the normal rule development process under s39 and s40 of the Electricity Industry Act (2010) (the Act) which requires a regulatory statement and consultation. These processes take time to develop robust rules that are not open to legal challenge in what can be a litigious industry. In particular, any changes to transmission pricing, or the successful application of a prudent discount, will reallocate transmission costs among market participants. This increases the risk of court challenge if the change is significant.
15. MBIE notes that the Authority has potential avenues under the Electricity Act (2010) to bypass the normal prudent discount process:
- It can avoid the need for a regulatory statement and consultation under s39 3(b) of the Act if it believes there is “widespread support for the proposal by those likely to be affected”, and
 - under s40 of the Act the Electricity Authority can make an urgent amendment to the code, if it deems this to be “in the public interest.” This change has a short duration of 9 months until superseded by the normal rule change process.
16. s9(2)(ba)(i) MBIE has not raised the use of these “fast track” options discussed above. We note that normal practice for pricing rule changes is that they are completed in June to take effect in April of the following year. This is to allow time for systems development and network companies to adjust their own pricing systems.
17. In practice this means that if fast tracked and completed by June 2021 a new prudent discount would not normally apply to NZAS transmission prices until April 2022, unless a way can be found to implement this faster than normal practice.
18. Furthermore, a prudent discount rule that is fast tracked to enable an application by NZAS, would also likely apply to other threatened industries. We cannot at this stage assess the merits of any applicant from qualifying under such a rule. If more parties were to receive relief under such a rule, this would increase Transpower’s charges.
19. However, NZAS exiting the electricity market will shift its full transmission costs onto all other grid customers. A prudent discount could reduce this risk.

Factors other than electricity costs influence Rio Tinto’s closure decision

20. Significantly reduced electricity and transmission costs are not the only factors affecting Rio Tinto’s closure decision and the viability of the smelter’s future operations. Global aluminium prices have recently been at four year lows, and the impact of COVID-19 generally, and the consequence on aircraft manufacturing specifically, have had significant downside impacts. This may suggest that even if short-term profitability is achievable via reduced electricity and/or transmission costs, Rio Tinto’s broader corporate strategy may not involve continued smelter operations at Tiwai.

Government's ability to influence the smelter closure is limited

The Government has limited influence in the commercial arrangements between NZAS, Meridian and Transpower

The first best option is for Meridian Energy to reach a commercial arrangement

21. NZAS has a financial contract with Meridian Energy which has the effect of fixing the price that the smelter pays for electricity. Meridian in turn has 'back to back' financial contracts with other parties, including Contact Energy, which mean part of the financial impact of the contract with NZAS is shared by those other parties.
22. The government is a majority shareholder in Meridian Energy, which is a listed company. The Crown as majority shareholder does not have the ability to direct Meridian. In any case, Meridian has strong incentives to reach a commercial arrangement with NZAS, including arrangements to slow down the closure, as evidenced by its recent offer.

The Crown could reduce the smelter's transmission prices ahead of the reduction due under the Electricity Authority's new TPM

23. NZAS pays Transpower to transmit electricity to the Smelter with an annual cost of \$65 million in 2018 (having risen from \$40 million in 2008). Shareholding Ministers do not have the ability to direct Transpower regarding the amount it charges NZAS (or any other Transpower customer).
24. Ministers have the ability to make a payment directly to NZAS to offset part of its transmission costs.
25. Shareholding Ministers also have the ability to enter into a contract with Transpower under section 7 of the State Owned Enterprises Act. This would have the same impact as a direct payment to NZAS – the Crown makes a payment to Transpower and Transpower reduces NZAS's transmission costs accordingly.
26. The difference between the approaches to reducing the smelter's transmission costs is generally superficial, with the additional complexity of involving Transpower in the arrangement versus simply making a payment direct to NZAS.

If Ministers are interested in reducing transmission costs, they may impose conditions in consideration for the subsidy

27. An agreement to reduce transmission prices would allow the Crown to stipulate conditions, in return for the subsidy provided by the Crown. These conditions could include:
 - Guaranteeing a continued level of operations, for a defined period of time (eg, three to five years)
 - The continued employment of some or all of current NZAS employees
 - Acknowledgement of remediation responsibilities and agreement to specific remediation activities within defined timeframes, and
 - Any other conditions Ministers are interested in.
28. Rio Tinto's appetite for such conditions would need to be tested. The Crown would also need to seek legal advice to ensure that any such conditions would appropriately bind Rio Tinto.

29. If transmission costs are offset by the Crown, it may be beneficial, s9(2)(j) to have robust conditions about responsibilities and standards for site remediation.

Site remediation risks are high

The legal responsibility and standards for remediating the site remains to be determined

30. Whilst there are numerous agreements and resource consents with the Crown and councils that control how the site is occupied and operated, we have been unable to locate a document that stipulates (when the plant closes) how and to what standard the site is to be restored.
31. Officials remain unclear about the legal responsibility for remediation, but assume as NZAS have recognised an accounting liability of approximately \$300 million for site rehabilitation, that NZAS consider themselves responsible for site restoration. However, the actual cost for remediation as part of the announced closure remains to be determined, and could be higher.

32. s9(2)(j)

33. s9(2)(h)

NZAS is updating its site closure plan; present hazardous waste presents challenges for long-term storage

34. NZAS informed MFE that they are updating their Site Closure Plan which will consider a full range of options from ensuring the buildings are safe for future use to full demolition, and stated they will consult government, councils, iwi and the community at the feasibility stage.
35. We understand the majority of remedial costs are associated with the disposal of the spent cathode liner stored on the site. This is a hazardous material and given its properties and the low-lying location and porous substrate of Tiwai Point, there is uncertainty around the most appropriate disposal method. If ongoing on-site storage is utilised, it will need to be resilient to climate change, specifically the combination of sea level rise and increased storm surges given Tiwai point's low lying topography.

Other options for alternative uses of the Tiwai Point site

The Department of Conservation has interests in the surrounding land and may wish to return it to a wetland

36. While NZAS owns the immediate smelter site, they lease adjacent Department of Conservation (DOC) land and have concessions to draw water.

37. DOC is currently giving consideration to the Sustainable Land Management status of Tiwai Point as part of a larger package of possible land status changes for the Waituna Wetlands area, which may impact future uses of the site.

Alternate future uses of the site have been proposed, but none are immediately implementable and the role of government is likely to be limited

38. A number of parties have approached Ministers and officials expressing interest in either use of the NZAS site or the energy from Manapouri once NZAS closes. We do not know how many of these parties are in negotiation with NZAS. Many of these plans assume NZAS sells the land it owns at the site, but it may not choose to do so.
39. Our significant concern is if a new operator acquires the site and takes over liability for the management of the hazardous waste and site remediation, but is unable to fulfil this obligation, for example by becoming insolvent, with remediation responsibility reverting to local and central government.
40. There is also a possibility of NZAS mothballing the site and returning at a later date if market conditions improve. This action may postpone any remediation activities and costs for NZAS. Officials consider this unlikely, as once closed, the costs of restarting an aluminium smelter are very high.
41. MBIE officials are leading work to develop objectives and principles that might be applied, should the government have a role in determining the future use of the smelter site. MBIE will report back to the Minister of Energy and Resources on this work in the coming weeks.

Alternative uses of the power have transmission considerations

42. Any new site that wishes to utilise the power from Manapouri is likely to need transmission. This could be either high voltage (Transpower) or low voltage (lines company) depending on the size of the application and its location. It is difficult to assess the timeframes and cost of any required transmission upgrades. ^{s9(2)(ba)(i)}
 [REDACTED] For some projects even longer may be needed to secure land access for transmission connections. Accordingly, a delayed closure will allow more time to undertake these transmission improvements.
43. If the smelter is removed from the site, Transpower may need to remove existing infrastructure that is no longer needed, for example the electricity lines and substation.

Some questions you may wish to ask Rio Tinto

Longer closure period

44. We suggest you explore with Rio Tinto what they may be willing to disclose about their appetite for a longer closure of three to five years, and what they require to make this happen.
45. If Ministers are interested in providing financial support by subsidising transmission costs, is Rio Tinto willing to accept conditions regarding the duration and level of operations, retention of personnel, and/or remediation responsibilities.
46. It will be important to discuss whether a delayed closure involves full or partial operations, and the impact this has on workforce retention.

Closure Plan

47. We suggest you enquire about NZAS's closure plan, with a specific interest in their plans for site remediation including the clean-up of environmental contamination, and the associated timeframes.

Alternative site uses

48. We suggest you inquire about approaches to Rio Tinto / NZAS by parties wishing to use their site and how they view these approaches.
49. We are aware some parties are talking to NZAS about the future use of their site, but we do not know how serious these negotiations are, or how interested Rio Tinto / NZAS is in such approaches. However, there may be reluctance to share any commercially sensitive details.

Next steps

50. If Ministers are interested in subsidising transmission costs for the smelter to achieve a delayed closure, officials will provide further advice regarding the options and conditions for providing such payment.
51. In the meantime, officials are developing advice regarding:
- a. The objectives and principles that might be applied, should the government have a role in determining the future use of the smelter site (MBIE).
 - b. The legal liabilities and responsibilities for site remediation, including whether these can be transferred, and what happens to these liabilities in the event of insolvency (MFE).

Annex One: Biographies

	<p>Alf Barrios</p> <p>Alf Barrios was appointed chief executive of Rio Tinto Aluminium (RTA) in 2014, a global portfolio comprising bauxite mines, alumina refineries and aluminium smelters.</p> <p>Prior to his tenure at Rio Tinto, Alf held various leadership positions at BP, including executive director and executive vice president, Downstream, at TNK-BP, based in Moscow, where he was directly responsible for the refining, trading, supply, logistics, and marketing businesses. He was president of the Spanish National Oil Industry Association (AOP) from 2009 until 2011.</p>
	<p>Kellie Parker</p> <p>Kellie Parker has been part of Rio Tinto's Iron Ore Executive Team since 2014 and was appointed the Managing Director, Pacific Operations for Rio Tinto, based in Brisbane, in September 2018.</p> <p>Kellie joined RioTinto in 2001 and in a prior role was the manager of the operations centre. She has held a number of safety, operational and leadership roles in the company.</p>
	<p>Jen Nolan, Director External Relations (NZ)</p> <p>Jen Nolan joined Rio Tinto as Director External Relations (NZ) in 2014. Jen is responsible for the corporate reputation of NZAS and of Rio Tinto in New Zealand. Her work incorporates government and regulatory affairs, internal and external communications including media management, oversight of NZAS' community investment programme and the role of deputy chair of the Major Electricity Users' Group (MEUG).</p>



Joint Report: Process for managing engagements with Rio Tinto on the closure of the New Zealand Aluminium Smelter

Date:	3 September 2020	Report No:	T2020/3059
		MBIE Report No:	2021-0800
		File Number:	SH-11-5-1

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>agree to the Treasury being the lead agency for engaging with Rio Tinto on a possible delayed closure for the New Zealand Aluminium Smelter</p> <p>agree to the engagement process and timeline set out in this briefing</p>	8 September 2020
Minister of Energy and Resources (Hon Dr Megan Woods)	<p>agree to the Treasury being the lead agency for engaging with Rio Tinto on a possible delayed closure for the New Zealand Aluminium Smelter</p> <p>agree to the engagement process and timeline set out in this briefing</p>	8 September 2020
Minister for the Environment (Hon David Parker)	<p>agree to the Treasury being the lead agency for engaging with Rio Tinto on a possible delayed closure for the New Zealand Aluminium Smelter</p> <p>agree to the engagement process and timeline set out in this briefing</p>	8 September 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
George Wibberley	Senior Analyst, Transitions Regions and Economic Development, Treasury	s9(2)(k) N/A (mob)	✓
Jean Le Roux	Manager, Transitions Regions and Economic Development, Treasury	N/A (mob)	

Andrew Hume	Director, Energy Markets Policy, Ministry of Business, Innovation and Employment	N/A (wk)	s9(2)(g)(ii)	
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Minister's Office actions (if required)

Return the signed report to Treasury.

Enclosure: No

Joint Report: Process for managing engagements with Rio Tinto on
the closure of the New Zealand Aluminium Smelter

Executive summary

- Rio Tinto has announced the anticipated closure of the New Zealand Aluminium Smelter (NZAS) at Tiwai Point in August 2021. Subsequent public statements by Rio Tinto have signalled that they are open to a delayed closure in exchange for commercial and government concessions.
- Engagement with Rio Tinto on an extended exit of NZAS requires a holistic approach, which the Treasury is best placed to lead, supported by MBIE and MfE.
- NZAS' closure will have wide ranging implications and a series of joint workstreams will determine the Crown's position on site remediation, workforce deployment, energy markets and transmission investments, and commercial considerations.
- We propose the Ministers of Finance and Energy and Resources, and the Minister for the Environment receive ongoing briefings and be jointly responsible for making future decisions about the potential closure.
- We have proposed an initial five-stage engagement process with Rio Tinto which will determine and preserve the Crown's negotiating position. The first steps in this approach will be to communicate this proposed engagement process and timelines to Rio Tinto in the week of 7 September.
- The Treasury intend to commission expert legal and strategic commercial advice and services to help address the financial risks and progress the work programme. This is estimated to cost around \$2 million for the period between now and the conclusion of any negotiated agreement in January 2021.

Recommended Action

We recommend that you:

- a **agree** to the engagement process and timeline set out in this briefing, including the proposal for the Crown to produce an Invitation to Treat to Rio Tinto, which will require Rio Tinto to make a submission to the Crown across a range of areas that the Crown requests.

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister of Energy and Resources

Agree/disagree.
Minister for the Environment

- b **agree** that the Ministers of Finance and Energy and Resources, and the Minister for the Environment (together the Tiwai Ministerial Group) will receive ongoing regular briefings and will be jointly responsible for making future decisions on the NZAS delayed closure work programme.

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister of Energy and Resources

Agree/disagree.
Minister for the Environment

- c **note** that the timeline and process set out in this briefing have not been tested with Rio Tinto and that we will provide additional briefing to the Tiwai Ministerial Group, if significant changes to the timelines or process need to be made.

Noted

- d **note** that if you approve the approach set out in this briefing, officials will engage in the week of 7 September with Rio Tinto on the proposed engagement process and timelines, while the Crown develops its negotiating positions.

Noted

- e **note** that the closure of NZAS exposes the Crown to significant fiscal, commercial and environmental risks, particularly on site remediation which is currently estimated to cost between \$290 million ^{s9(2)(h)} million.

Noted

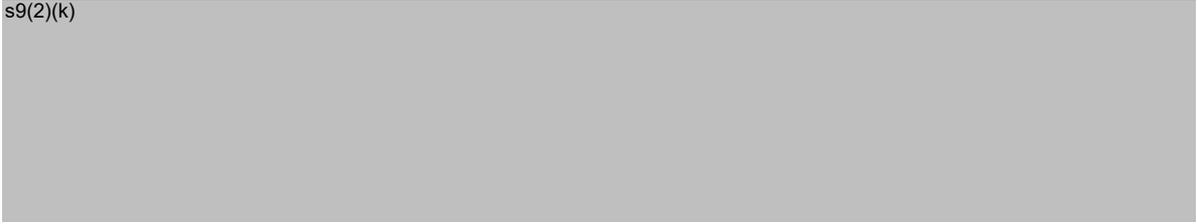
- f **note** that the Treasury intends to commission expert commercial, legal, and potentially environmental advice to support the work programme. This advice is an important input to manage the risks noted in rec e, and will assist officials to both address information gaps (including quantifying risk and reviewing all levers available to the Crown), and negotiate a robust commercial agreement with Rio Tinto.

Noted

- g** **note** that officials' initial estimate is that the advice in rec f will cost approximately \$2 million for the period between now and the conclusion of any negotiated agreement in January 2021. Officials are currently investigating the most appropriate method of securing this funding and will provide further advice on this in the next two weeks.

Noted

s9(2)(k)



Jean Le Roux
**Manager,
Transitions, Regions and Economic
Development
Treasury**

Andrew Hume
**Director,
Energy Markets Policy
Ministry of Business, Innovation and
Employment**

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

Joint Report: Process for managing engagements with Rio Tinto on the closure of the New Zealand Aluminium Smelter

Purpose

1. This report seeks your approval for Treasury to lead the government work programme and direct engagement with Rio Tinto regarding a possible delayed closure of the New Zealand Aluminium Smelter (NZAS), including communicating the proposed engagement process and timelines in the week of 7 September 2020.

Proposed approach between agencies

Engagement with Rio Tinto on an extended exit of NZAS requires a holistic, all of government approach, which the Treasury is best placed to lead

2. The Ministry of Business, Innovation and Employment (MBIE) has been to date the lead agency on issues related to the announced closure of NZAS, with support from officials at the Treasury and the Ministry for the Environment (MfE). MBIE has been leading this work as Rio Tinto is primarily seeking reductions in electricity and transmission costs.
3. However, the closure of the smelter has a range of dimensions including environmental remediation, regional economic development, workforce redeployment, and commercial policy. Officials therefore recommend that the Treasury lead this joint-work programme to promote the Crown's interests. MBIE and MfE support this approach.
4. The Treasury, given its expertise across a range of policy areas and in particular its experience in dealing with commercial issues, is best placed to coordinate the Crown's engagement with Rio Tinto and ensure a holistic approach that balances and preserves the Crown interests. The Treasury will be supported by a cross agency governance group comprising of officials from MBIE and MfE. Given the commercial sensitivity of this work programme, officials will implement information management measures to share information appropriately and securely between agencies.
5. The Treasury will also contract experienced commercial negotiators to support officials during negotiations with Rio Tinto.
6. Given the range of policy areas any agreement might cover, we propose to provide regular briefings on all issues to the Minister of Finance, the Minister of Energy and Resources and the Minister for the Environment, together the 'Tiwai Ministerial Group' (TMG). This will ensure Ministers are kept up to date and the Crown's approach can adapt quickly to changing circumstances. We also propose that the TMG members are jointly responsible for making decisions on the NZAS delayed closure work programme going forwards.

The closure of NZAS and its implications will be wide ranging. A series of joint workstreams are required to determine the Crown's position on each key component of the negotiations.

7. The Minister of Energy and Resource's letter to Rio Tinto dated 21 August made clear that the Government would not have a mandate to negotiate the conditions for a delayed closure until after the election. It also encouraged Rio Tinto to work with

officials to draft a Heads of Agreement in the meantime, which would set out the high level terms of any arrangement.

8. Before the Crown can negotiate with Rio Tinto, there are a number of key information gaps to fill to confirm the Crown's negotiating positions. The benefits and costs of Crown intervention remain to be determined. We therefore propose to engage with Rio Tinto at a high level through an Invitation to Treat. This would allow the Crown to identify the areas where it is interested in better understanding Rio Tinto's position, before entering into negotiations. The Treasury will coordinate the overall work programme to identify, secure and analyse the information needed. This will include the following four workstreams:
- **Site remediation responsibility and standards** (MfE lead) – s9(2)(h) [REDACTED]
 - **Extension of the duration and level of operations** (Treasury lead) – the Crown will develop a position on the ideal duration of any extension and the level of operations during the period of that extension, which will impact site remediation, workforce retention and transmission investments.
 - **Energy markets and transmission considerations** (MBIE lead) – the effect of the closure on wholesale, commercial and residential electricity and transmission users, transmissions investments, and alternative uses, will be assessed, and affect the Crown's position on the delayed closure.
 - **Workforce redeployment** (MBIE lead) – the impact of the closure on the smelter's workforce, and consequences for broader regional economic development, and transitions for Southland also need to be factored into the Crown's approach.

Engagement process

A five-stage engagement process with Rio Tinto will determine and preserve the Crown's negotiating position

9. The following five-stage process will develop the Crown's positions on key conditions for extending the closure of the smelter, while maintaining all options for negotiation:
- a) *September-October 2020 – Information gathering on workstreams*
The above workstreams will be completed by officials so that the Crown's preliminary negotiating position in each of the key issues is confirmed. We will continue to refine our negotiating positions beyond October, as more information becomes available from both Rio Tinto and other sources. We will also develop an Engagement Framework Agreement which will establish the timeline and methods of engagement with Rio Tinto and enable information requests to be made to Rio Tinto.
 - b) *November 2020 - Invitation to Treat*
The Crown will share the list of key issues and negotiating parameters with Rio Tinto for a response by mid-November. We will develop an Invitation to Treat document which invites Rio Tinto to make a submission to the Crown about the desired conditions for an extended closure, based on the Crown's stated key objectives, interests and parameters. For example, the Crown could stipulate a requirement for physical onsite environmental inspections to better understand

the remediation needs. It may also wish to include resolution of the off-site Mataura Dross issue as part of the package. This approach will ensure that the Crown is not making any commitments at this stage of the process.

- c) *November 2020 - Rio Tinto is invited to make a submission on the Crown's Invitation to Treat*

Rio Tinto will develop its proposition and conditions within each of the key areas stated in the Invitation to Treat for the Crown to consider. This will include Rio Tinto's proposed undertakings regarding remediation and workforce, and what it seeks from the Crown in return. This step would involve engagement between officials and Rio Tinto to refine expectations and objectives.

- d) *December 2021 - Cabinet mandate secured*

A Cabinet paper will be prepared by early December to seek a mandate from Cabinet to engage in negotiations with Rio Tinto to extend the smelter's operations, including the fiscal envelope required, the mechanism of support, and remediation and workforce requirements. The Cabinet paper will seek approval of a Heads of Agreement, which will stipulate the Crown's negotiating positions and parameters, under which a deal will be negotiated. If required to meet overall timeframes, we believe steps c) and d) could overlap, provided step c) is sufficiently advanced to be described in the Cabinet paper.

- e) *January 2021 - Negotiations start*

Negotiations between the Crown and Rio Tinto will commence in February under the Cabinet approved Heads of Agreement. These negotiations are anticipated to result in a binding legal contract between the Crown and Rio Tinto. It is hard to anticipate the duration of negotiations, but we currently expect them to occur over a two to six week period.

10. The above process and timeline have been developed by officials to bring some structure to engagements with Rio Tinto. The current timeline is very ambitious and has been developed based on our current understanding that NZAS will need to begin making operational decisions in January 2021, for an August 2021 shutdown. We have yet to test the process or timelines with Rio Tinto and these discussions may result in changes to the above timelines. We also welcome your feedback on the proposed timeline and process.
11. There are large fiscal risks associated with the closure of NZAS. The cost of remediation is uncertain but likely to be high (current estimates range between \$290 s9(2)(h) million). Rio Tinto's liability (if any) may be quite limited and difficult to enforce. The financial cost of Crown support required by Rio Tinto to delay closure is also likely to be significant.
12. To support officials to address these risks and ensure any agreement is in the Crown's interests, the Treasury will commission expert advice and services. This will include strategic commercial and legal advice, and experienced negotiators, as well as technical expertise to assess the scope, process and cost of site remediation. Our estimates suggest this will cost around \$2 million for the period between now and the conclusion of a negotiated agreement in January 2021. Officials are currently investigating the most appropriate method of securing this funding and will provide further advice on this in the next week.
13. There are several options for delivering financial support to Rio Tinto, including using a non-commercial contract under section 7 of the State Owned Enterprises Act via Transpower (as previously recommended in MBIE briefing 2021-0556). We do not think the Crown should commit to a specific delivery mechanism at this stage, as we will need to consider all of the Crown's objectives including enforcement against remediation and workforce requirements before determining the most appropriate option. Once we have resolved the information gaps and developed the Crown's

objectives for the negotiation, we will provide further advice to Ministers on the most effective delivery mechanism for Crown support.

Officials will engage with Rio Tinto on the proposed engagement process and timelines, while the Crown develops its negotiating positions

14. While the key workstreams are being progressed, officials will communicate the proposed five-stage process and associated timelines to Rio Tinto in the week of 7 September and will enquire about the timing of their key internal decisions and deadlines. This is likely to impact the proposed timelines set out above. This engagement will indicate at a high level the key areas, beyond transmission charges, in which the Crown has an interest. This approach will also reaffirm the Crown's willingness to engage with Rio Tinto and ensure alignment of the objectives and timing of this process with the Crown's interests.

Next Steps

15. If you agree with the proposed approach set out in this report, officials will start the first stage of the engagement process, by undertaking work to fill the current information gaps. This will involve engaging with Transpower, Environment Southland and Meridian. The Treasury will enter into a confidentiality agreement with Meridian to understand the value of their electricity offer to NZAS, which will also bind Ministers.
16. We will communicate with Rio Tinto on the process and timelines for engagement in the week of 7 September 2020 and subsequently update the TMG on next steps, including any revised timelines.
17. If you do not agree with the proposed process, then please discuss with officials your proposals for an alternative approach.



Reference: T2020/3103 SH-11-5-1

Date: 10 September 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)

Deadline: 10 September 2020
(if any)

Aide Memoire: Negotiation options for the New Zealand Aluminium Smelter's closure

Purpose

This briefing provides negotiating options for the possible delayed closure of the New Zealand Aluminium Smelter (NZAS). It also includes talking points for your meeting with Rio Tinto on 11 September 2020 and timelines for the negotiation options (Annex 1), a summary of the Ministry for the Environment's legal advice relating to site remediation liability (Annex 2) and a cost breakdown for external expert advice to support any agreement (Annex 3).

If time allows, we propose that you meet with officials on the afternoon of September 10 to discuss the preferred approach, prior to meeting with Rio Tinto.

Options for negotiation

We set out our preferred approach and timelines for advancing a potential agreement with Rio Tinto in a joint report on 3 September (T2020/3059 refers). Our preferred approach is to take a holistic approach to the negotiations. This option offers the best opportunities for the Crown to undertake due diligence regarding potential liabilities and negotiates on that basis to ensure appropriate site remediation takes place. This is currently the most significant risk for the Crown, as preliminary analysis suggests Rio Tinto's liability (if any) is quite limited and difficult to enforce. Whilst Rio Tinto's current plans for site remediation are unknown, enforcement of any liability is likely to be required through some form of contractual leverage. Rio Tinto may decide to undertake and fund some form of site remediation without any kind of agreement with the Crown, but the extent to which any activities meet the Crown's needs are unknown until we have assessed their site remediation plans. The cost of remediation is likely to be high (estimates between \$290 ^{s9(2)(h)} million).

Such an agreement could be in place by January 2021, which we understand is Rio Tinto's deadline for a smelter extension. The timing is built around the formation of a new government post-election. We are yet to test the timeline with Rio Tinto and there

is a risk that the company may push back on this proposed timing. The Southland community would also like certainty about the future of the smelter as soon as practicable.

You have options for advancing a potential agreement with Rio Tinto, depending on when a Cabinet mandate can be sought and the scope of the agreement

A holistic approach to addressing remediation is the first best option

The first best option seeks to crystallise the issues around site remediation and workforce as part of an agreement with Rio Tinto (*Option 1*). Under this approach, officials would engage with Rio Tinto to gather information. An 'Invitation to Treat' document will then invite Rio Tinto to make a submission to the Crown about the desired conditions for an extended closure, based on the Crown's key objectives, interests and parameters. A Cabinet mandate would be sought post-election. This approach will give us time to carry out appropriate due diligence and address information gaps, allowing us to pursue the best outcome for the Crown. We aim to have an agreement finalised in late January 2021.

If the timelines for this approach are longer than Rio Tinto would prefer, there is an option to expedite this process (*Option 2*), with a Cabinet mandate for an agreement being sought prior to the election on 5 October (Cabinet's last sitting date before the election). Seeking a Cabinet mandate after this point would require a special Cabinet meeting, or waiting until a post-election Cabinet meeting.

Under Option 2, the Crown's positions and parameters would be less well developed and defined in the Invitation to Treat. Officials estimate an agreement under this approach could be reached in mid-December 2020.

An agreement limited to transmission charges and excluding site remediation considerations will be quicker to agree

An agreement with a narrower scope will be simpler and easier to negotiate with Rio Tinto. Such an agreement could be limited to transmission charge rebates in exchange for a delayed closure (*Option 3*), and could attempt to include a commitment to fully disclose its workforce planning and site remediation plans. This would presumably retain workforce employment but would not provide direct contractual levers to address remediation issues. This approach would simply defer resolving remediation issues by the length of the extension. This option is not recommended. If Cabinet agreed this approach prior to the election, an agreement could be in place by the end of October 2020.

An agreement limited to transmission charge rebates could also be pursued directly post-election (*Option 4*). This would have the benefit of allowing the Crown additional time to develop its approach and parameters for transmission charge rebates. Cabinet approval would be sought in November with an agreement in place by the end of November/December 2020. This approach would also not provide additional

contractual leverage to resolve the remediation issues should that be necessary, and is accordingly not recommended.

A Just Transitions package for Southland remains an alternative option

If the Crown is unable or unwilling to reach an agreement with Rio Tinto, funding could be directed towards a Just Transitions package for Southland, including regional economic development (Option 5). This approach would not address remediation issues, and would require further development, but could allow for a more targeted approach for the smelter's workers and the wider economy of Southland. More planning would be required to develop this approach.

There are two primary options for delivering financial support to Rio Tinto: using a non-commercial contract under section 7 of the State Owned Enterprises Act 1986 via Transpower (as previously recommended in MBIE briefing 2021-0556) or making a direct payment. Using a section 7 contract restricts the ability of the Crown to impose conditions, takes more time to implement, and makes enforcing conditions more difficult. In contrast, a direct contract and payment could be more readily implementable, enforceable and would incorporate all of the Crown's desired conditions. For these reasons, a direct contract and payment appears to be the first best option.

The more structured the Crown's engagement approach, the more confidence Rio Tinto is likely to have in the Crown's approach which increases the likelihood of Rio Tinto accepting the proposed timelines. Timelines and key milestones for all options are included as Annex 1, and a table of the benefits and consequences for all options are outlined on the following page in Table 1.

Table 1: Benefits and consequences for potential closure approaches

OPTIONS	Site Remediation in scope	Workforce in scope	Information gaps resolved ahead of negotiations	Execution complexity (incl. transaction costs)	Overall benefits for Rio Tinto	Overall benefits for the Crown
OPTION 1 Holistic approach – first best option (recommended)	Yes	Yes	Yes	High	Low	Highest
OPTION 2 Expedited holistic approach (second best)	Yes	Yes	Partially	Highest	Medium	High
OPTION 3 Expedited option on transmission pricing (not recommended)	No	Yes	No	Lowest	Highest	Low – Workforce retained/electricity benefits
OPTION 4 Further work before agreeing transmission rebate (not recommended)	No	Yes	Partially	Medium	High	Low – Workforce retained/electricity benefits
OPTION 5 Just Transitions package for Southland (third best)	<i>No levers to achieve additional benefits on site remediation</i>	<i>Workforce dealt with through separate package</i>	<i>Few avenues for gaining additional information from Rio Tinto</i>	High	N/A	Medium – more targeted benefits for Southland community

The best approach to the meeting with Rio Tinto will be to discuss their timelines and process of engagement with the Crown, while avoiding discussion of substantive topics

We recommend that you use the meeting with Rio Tinto on 11 September 2020 to focus on the negotiating process and associated timelines. It is important to understand their expectations and timing for how a negotiated agreement could be agreed. We strongly recommend avoiding discussion of the substantive contents of a possible agreement.

Key talking points

The Crown is interested in site remediation, workforce deployment and electricity considerations

During the meeting, you might want to start by reiterating the key areas of Crown interest to inform the dimensions of any potential deal. This includes:

- The impact of the closure on the smelter's workforce, and consequences for broader regional economic development
- The current state of the site and Rio Tinto's plans to remediate the site
- The duration of any potential closure and the level of smelter operations during that period

It is important to highlight to Rio Tinto that the Crown's proposed approach involves working collaboratively on these matters.

The Crown's preferred approach involves working together with Rio Tinto making a submission to delay the closure (Invitation to Treat)

You could set out your preferred approach for reaching an agreement with Rio Tinto:

- Engagement and information gathering is a key first step. The Crown will work with Rio Tinto and other involved stakeholders to develop the key parameters of the Invitation to Treat
- An Invitation to Treat document will then invite Rio Tinto to make a submission to the Crown about the desired conditions for an extended closure, based on the Crown's stated key objectives, interests and parameters
- Once Rio Tinto's response is received, Cabinet's mandate for negotiating and concluding an agreement will then be sought
- Formal negotiations will then be entered into, and an agreement will be finalised and then implemented

This process will take time, which Rio Tinto can hasten by providing key information

This process will take time and most options for concluding an agreement will take until the end of the year. Rio Tinto may seek to challenge the time required, as part of their commercial negotiating strategy. In response, you could:

- Highlight that this proposed timing is ambitious and takes account of the New Zealand general election and the need to seek a Cabinet mandate once a new government is formed after the election, before any negotiations can begin (as per Minister Wood's letter of 21 August 2020).
- Ask Rio Tinto to explain their key deadlines and the business timeframes within which they would require decisions to be made.
- Ask Rio Tinto to provide the site remediation plan for Tiwai Point as soon as possible, and up-to-date information on the smelter's workforce.
- You may also wish to indicate that independent onsite inspections are likely to be required, if site remediation is likely to be within the scope of a deal.

Key questions to ask Rio Tinto

If timings allow and these matters haven't already been discussed in the meeting, we suggest you ask Rio Tinto the following questions:

- Does Rio Tinto have a preference for the period of the extension, for example. 4 years?
- Is Rio Tinto considering reducing the level of operations, for example, operating at reduced capacity in the final year?
- Is Rio Tinto developing a workforce plan for the closure? If so, when will they be in a position to share it?
- Can we agree now in-principle for independent assessors to conduct site visits?
- Could Rio Tinto outline their key milestones and deadlines relevant to the closure?
- Are there any other key dates or important events that we should be aware of?
- When will Rio Tinto be in a position to share their site remediation plan with us?

Next steps

After your meeting with Rio Tinto on 11 September 2020, at your direction, officials will subsequently arrange to meet with Rio Tinto to advance your preferred approach.

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)

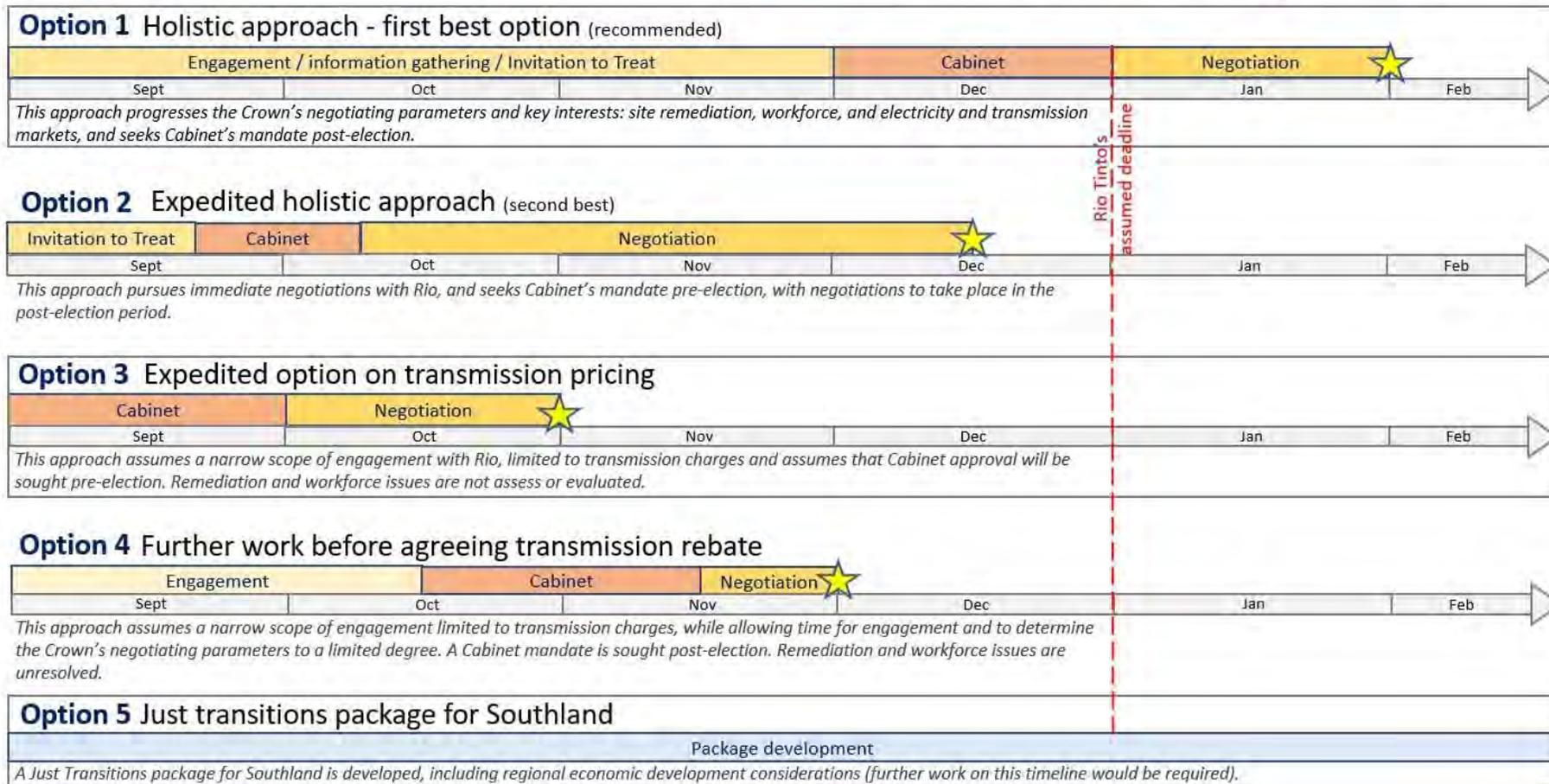
James Shannon, Policy Analyst, Firm Support, s9(2)(k)

Alistair Birchall, Acting Manager, Economically Significant Firms, s9(2)(k)

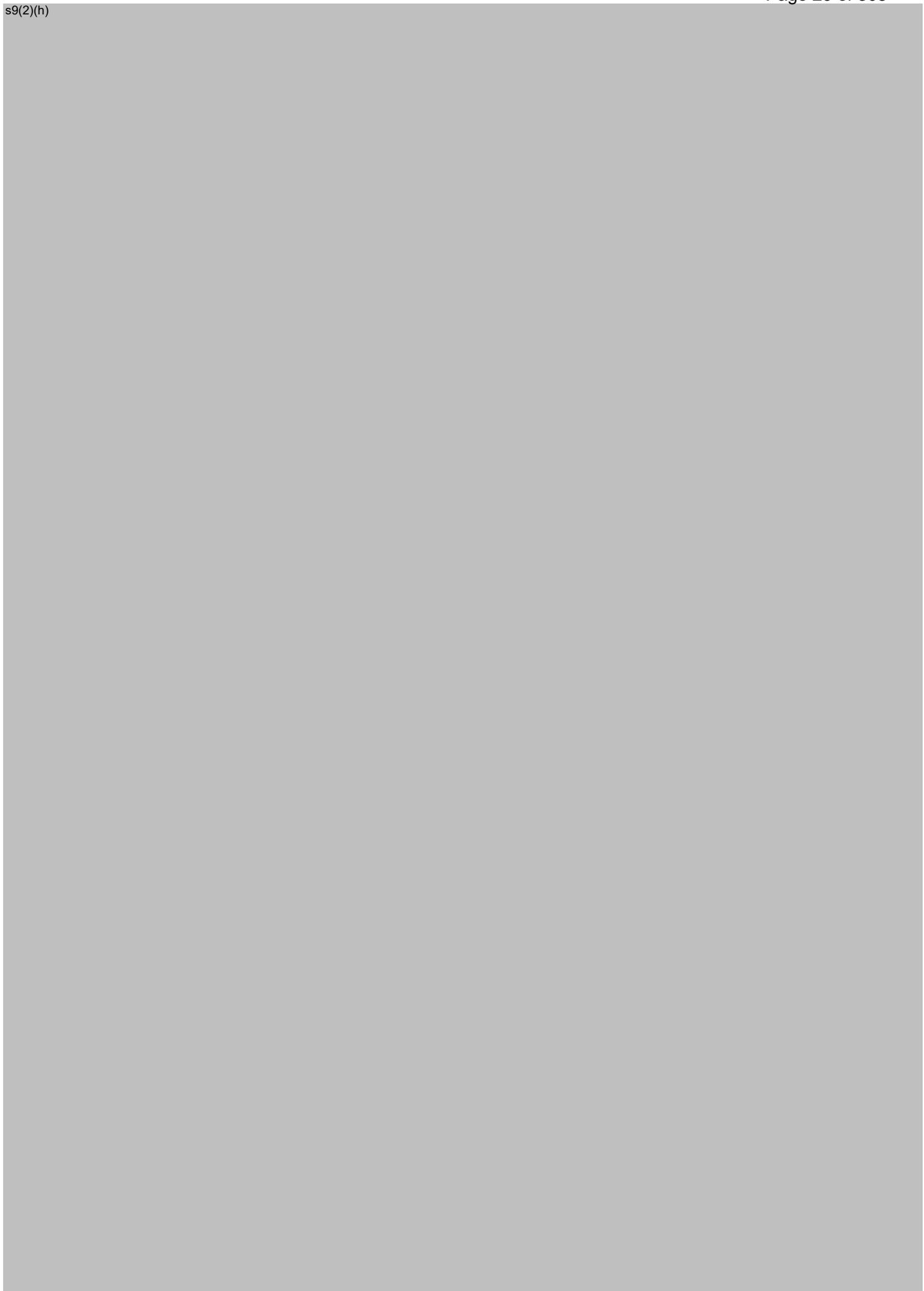
Annex 1: Timelines and further information for potential closure approaches

TIWAI SMELTER CLOSURE OPTIONS

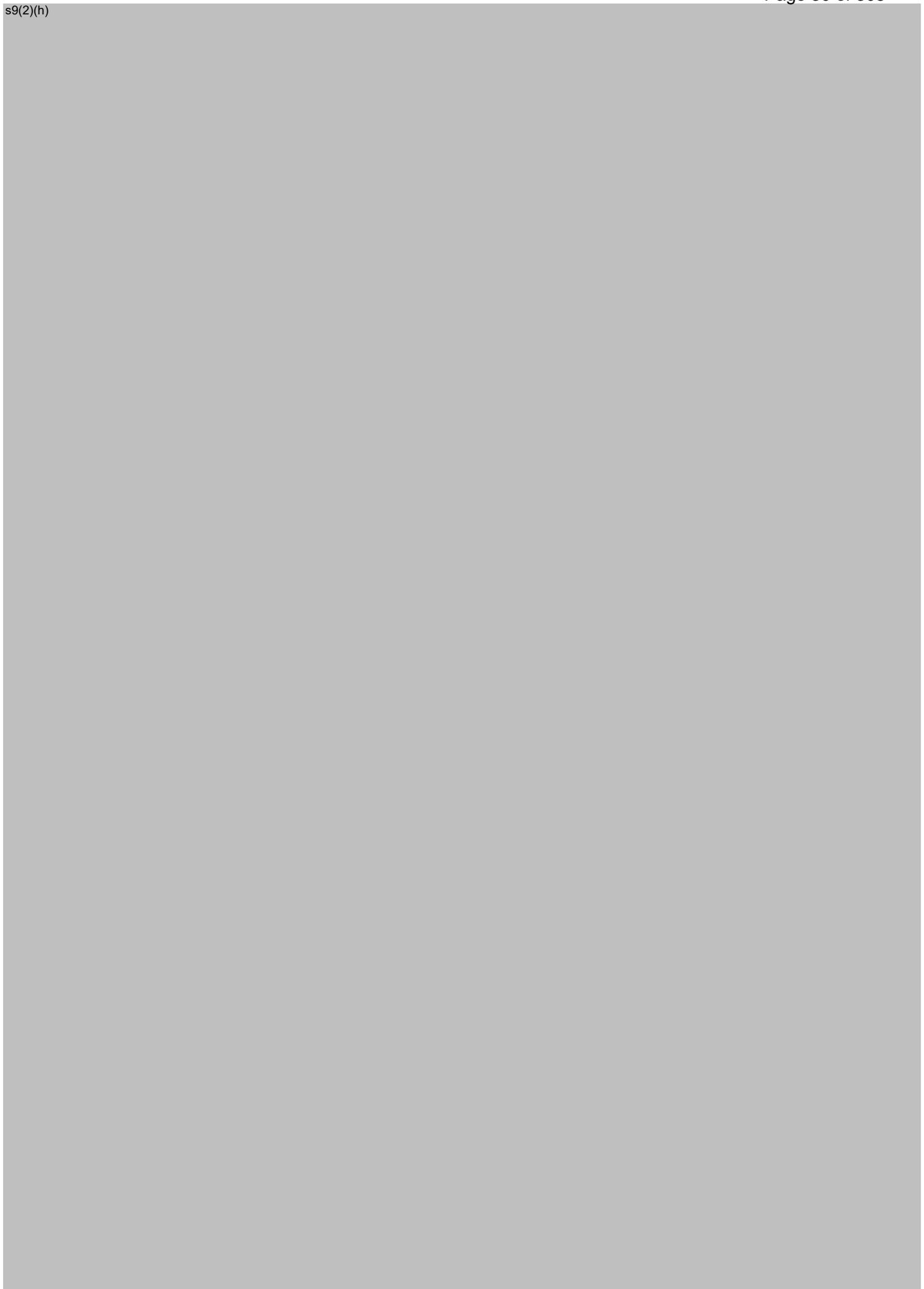
- Key question: timing of Cabinet mandate
- Key assumption: first Cabinet meeting after election is mid-November
- ★ = completed agreement



s9(2)(h)



s9(2)(h)



Annex 3: Cost breakdown for expert advice and services

You asked for more information on the costs associated with the work programme. The Treasury intends to commission expert advice and services to help address the significant environmental, commercial and fiscal risks associated with the programme. This is estimated to cost approximately \$2 million for the period between now and the conclusion of any negotiated agreement in January 2021.

Whilst the costs are approximate until we have gone through the appropriate procurement processes, an indicative cost breakdown is presented in the below table. These costs may be met via a fiscally neutral transfer within Vote Finance. Officials view the costs for ensuring appropriate due diligence and negotiation are outweighed by the benefits of crystallising potential liabilities for the Crown related to the smelter.

Item	Cost estimate	Total cost
Legal advice – commercial issues	\$100,000 per month for Sept 20 to Jan 21 inclusive (5 months)	\$500,000
Legal advice – site remediation	\$100,000 per month for Sept 20 to Jan 21 inclusive (5 months)	\$500,000
Strategic commercial support	\$100,000 per month for Sept 20 to Jan 21 inclusive (5 months)	\$500,000
Commercial negotiator	\$150,000 per month for Dec 20 to Jan 21 inclusive (2 months)	\$300,000
Environmental assessment	\$200,000 for independent environmental assessment of site remediation risks including inspections, site visits and background analysis	\$200,000
Total		\$2,000,000

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Reference: T2020/3128 SH-11-5-1

Date: 15 September 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: None
(if any)

Updated timeline and Crown approach for discussing a delayed closure of the New Zealand Aluminium Smelter

Purpose

This briefing provides an update on the Crown approach and timelines for engaging with Rio Tinto regarding a possible delayed closure of the New Zealand Aluminium Smelter (NZAS), following your meeting with Rio Tinto on 11 September 2020. An updated timeline is included in Annex 1. The information contained in this briefing should be treated as commercial

Revised negotiation timeline

On 10 September 2020 we outlined a range of negotiating options and timelines (T2020/3103 refers). Our preferred option was to take a holistic approach to the negotiations, with any agreement in place by January 2021. However, in their meeting with you on 11 September 2020, Rio Tinto indicated that they would need to reach an agreement with the Crown by 31 December 2020 to provide certainty for their customers, workers and suppliers. You directed officials to work with Rio Tinto to try to meet these timelines.

We have produced a revised timeline for the negotiations:

- **September: *Information gathering workstream and engagement framework.*** Officials will begin engagement with Rio Tinto and commence information gathering. We will use these initial engagements to agree the confidentiality requirements and the negotiation process. Rio Tinto will need to promptly share information with officials on the key areas of Crown interest to facilitate a shorter negotiation timeline, including their site remediation plans, workforce description and closure study.
- **Early October: *Invitation to Treat.*** The information gathering workstream will be used to inform the Crown's objectives, interests and parameters for the

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agreement. The Crown will then prepare an 'Invitation to Treat' document, which will invite Rio Tinto to make a submission to the Crown about the desired conditions for an extended closure, based on the Crown's stated key objectives, interests and parameters.

- **Mid-October to mid-November: *Draft 'Heads of Agreement'***. Once Rio Tinto's response to the 'Invitation to Treat' is received, we will assess their proposal and continue engagement to begin to develop the terms of a 'Heads of Agreement'. This will consist of developing a high level option (or options) for an agreement that could be acceptable to both Rio Tinto and the Crown. The draft agreement will then be considered by Cabinet, as officials have no mandate to formally agree a 'Heads of Agreement' on the Government's behalf.
- **Mid to late November: *Cabinet mandate***. Once the new Government is formed, we will seek Cabinet's mandate for negotiating and concluding an agreement with Rio Tinto, which will include agreeing to the 'Heads of Agreement' and a funding envelope.
- **Mid-November to early-December: *Formal negotiation and preparation of legal agreement***. Following Cabinet's agreement, we will negotiate the legally binding agreement with Rio Tinto, based on Cabinet's agreed mandate, the previously established Heads of Agreement and funding envelope.
- **Mid December: *Final sign-off of agreement***. Any agreement will need to be reached by mid-December to go through internal sign-off by Ministers, Rio Tinto and Sumitomo by 31 December.

A more detailed timeline is provided in Annex 1.

Negotiation approach

During the meeting, you also re-confirmed that the main areas of Crown interest in the negotiations are:

- The impact of the closure on the smelter's workforce, and consequences for broader regional economic development in Southland
- The current state of the site and Rio Tinto's plans to remediate the site
- The duration of any potential closure and the level of smelter operations during that period
- The impact of the smelter's closure on electricity and transmission users and transmission investments

As outlined previously (T2020/3059 refers), the Treasury will lead the negotiations and associated work programme supported by the Ministry for Business Innovation and Employment (MBIE) and the Ministry for the Environment (MfE). This will include joint workstreams to determine the Crown's position on the above issues. To meet the revised timeframes outlined in this briefing, interim outputs from these workstreams will

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be finalised by early October and they will form a key component of the 'Invitation to Treat' document.

Engagements with Rio Tinto will be led by a negotiation team comprising of the following members:

- Maureena van der Lem (Team Lead, Director, Firm Support Directorate, Treasury)
- Paul Foley (Legal Counsel, Consultant, MinterEllisonRuddWatts)
- Jean le Roux (Manager, Transitions, Regions, and Economic Development, Treasury)
- Alistair Birchall (Manager, Firm Support, Treasury)

Other officials may join the discussions as-needed based on the agenda subject matter, including:

- Andrew Hume (Policy Director, Energy and Resource markets, MBIE)
- Shaun Lewis (Director, Waste and Resource Efficiency, MfE)

We have signed a confidentiality deed with Meridian Energy and will begin engagements with them to better understand the nature of their confidential offer to Rio Tinto on electricity prices. We will also work with Transpower to ensure any agreement also takes into consideration their infrastructure investment plans.

Next steps

You directed officials to meet with Rio Tinto in the week of 14 September 2020 to begin the engagement process. We have agreed to meet with Rio Tinto on 17 September 2020 to introduce the Crown negotiating team, discuss our framework for future engagements and outline our information requirements. We will continue to engage with Rio Tinto on a regular basis and will provide weekly reporting to the Tiwai Ministerial Group to update on these discussions. As previously advised (T2020/3103 refers), we intend to commission external expert advice and services to support the work programme for an estimated cost of \$2 million. We will engage with the Minister of Finance on the most appropriate method of meeting these costs.

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)

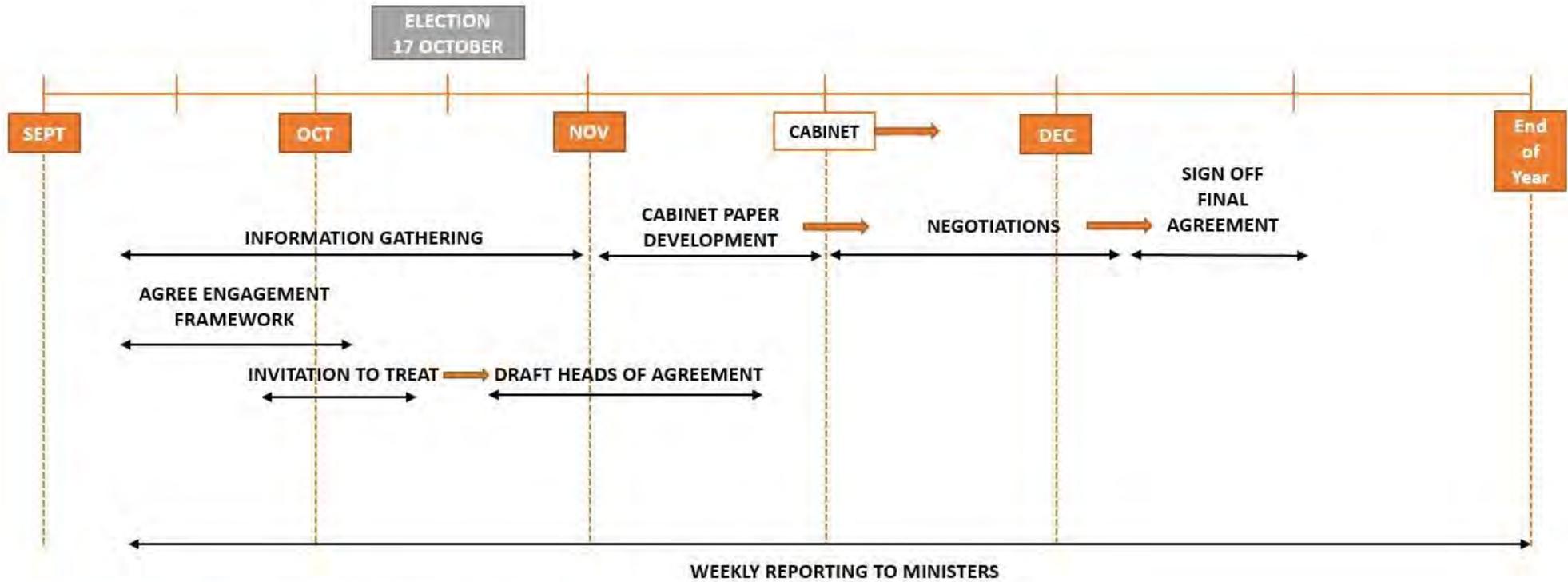
Alistair Birchall, Acting Manager, Firm Support, s9(2)(k)

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

James Shannon, Commercial Advisor, Firm Support, s9(2)(k)

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Annex 1: Revised timeline for engagements with Rio Tinto on a delayed closure of NZAS, September to December 2020



- INFORMATION GATHERING WORKSTREAMS**
- Workforce and regional economic impacts (MBIE)
 - Site remediation (MfE)
 - Duration of extension and level of operations (Treasury)
 - Electricity and transmission (MBIE)



Reference: T2020/3166

SH-11-5-1-4-3

Date: 22 September 2020

To: Minister of Finance (Hon Grant Robertson)
 Minister of Energy and Resources (Hon Dr Megan Woods)
 Minister for the Environment (Hon David Parker)

Deadline: None

Aide Memoire: Project 14 Weekly Update 22 September 2020

Context

Officials are engaging with Rio Tinto regarding potential options for a delayed closure of the New Zealand Aluminium Smelter (NZAS).

Officials have agreed to provide Ministers with a weekly update by way of an aide memoire. This aide memoire is the first in the series. The contents of this briefing are

Officials have met with Rio Tinto to progress discussions

Officials from the Treasury, supported by officials from the Ministry of Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE), met with representatives from Rio Tinto on Thursday 17 September 2020. The purpose of the meeting was to discuss the information, process and timing required to consider a delayed closure of the smelter.

Officials outlined the main areas of Crown interest and requested key information relating to each, in order to progress an Invitation to Treat and a draft Heads of Agreement that would allow any potential deal to be completed by the end of 2020. In summary:

- Site remediation:** Rio Tinto provided a high-level overview of its closure plans. s9(2)(ba)(i)

There is some risk Rio Tinto's remediation planning is not well advanced. As a first step to closing this information gap the Crown has requested the closure plan as well as further information on the site's inventory and the location and quantity of existing environmental waste.
- Extension duration:** Rio Tinto indicated a preference for a four-year extension (aligned with the potential electricity offer from Meridian) but expressed openness to other periods of extension.
- Workforce:** s9(2)(ba)(i)

- **Government intervention:** Rio Tinto indicated that it is looking for a reduction in its transmission prices to approximately s9(2)(ba)(i). Crown intervention to support a notional annual transmission charge at this level would cost s9(2)(ba)(i).
- **Structure of transaction:** Rio Tinto indicated that it would prefer any government intervention to come in the form of a total delivered electricity price (i.e. a combined electricity and transmission price per megawatt hour). As the Transmission Pricing Methodology is set independently the Crown may not be able to satisfy this preference. Rio Tinto also noted that they were potentially open to other approaches.

We are working at pace, towards a potential deal by mid-December

Officials have agreed to meet with Rio Tinto weekly, and have submitted an information request for a response by the end of September 2020, to enable an Invitation to Treat and a draft Heads of Agreement to be developed in October 2020. Cabinet and Rio Tinto Board approval will then be sought in November 2020, before a deal is signed in mid-December 2020. A high-level overview of project milestones is provided in *Annex 1*.

Officials have met with Meridian to understand their discounted electricity offer

The Treasury has entered a confidentiality agreement with Meridian on behalf of the Crown to understand the discounted electricity offer it has made to Rio Tinto. Meridian disclosed that it has offered Rio Tinto a substantial discount on current prices. Meridian considers its offer as a 'super sharp' one-off price that is not economically sustainable in the long term s9(2)(ba)(i).

Next steps

- We are entering a confidentiality agreement with Transpower to enable a better understanding of the applicable transmission charges.
- Workshops have been organised with MBIE, MfE, Transpower and external advisors on Thursday 24 September to advance the key Crown workstreams.

Jean Le Roux, Manager, Transitions, Regions, and Economic Development (TRED),

s9(2)(k)

Alistair Birchall, Acting Manager, Firm Support, s9(2)(k)

George Wibberley, Senior Analyst, TRED, s9(2)(k)

James Shannon, Commercial Advisor, Firm Support, s9(2)(k)

PROJECT 14: High-level project plan		September		October				November				December		
#	KEY MILESTONES	21	28	5	12	19	26	2	9	16	23	30	7	14
1	Procurement of services/capability													
2	Information gathering & due diligence phase													
3	Workstream development (Heads of Agreement 'HOA' input)													
4	Invitation to Treat sent to Rio			*										
5	Rio consider and respond to Invitation to Treat													
6	Crown considers response and develops draft HOA													
-	<i>NZ election</i>				*									
7	Rio consider and respond to HOA													
8	Crown considers response and refines draft HOA													
9	Draft HOA in place ready for Cabinet / Rio board													
10	Cabinet mandate sought (Rio seek board approval)													
11	Formal negotiation													
12	Preparation of legal agreement													
13	Final agreement signed													
-	Governance meetings													

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Reference: T2020/3206 SH-11-5-1-4-3

Date: 28 September 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: None

Aide Memoire: Project 14: Weekly Update 28 September, 2020**Context**

Officials are engaging with Rio Tinto regarding potential options for a delayed closure of the New Zealand Aluminium Smelter (NZAS). Officials and Rio Tinto representatives meet weekly on Wednesdays. The key workstreams in scope of the engagement are:

- Site remediation
- Workforce and transition
- Electricity and transmission
- Deal structure (support mechanism, duration and level of operations).

Officials have requested key information from Rio Tinto on each of these workstreams by 30 September.

This timeframe allows an Invitation to Treat to be developed prior to a Heads of Agreement being drafted for negotiations. The negotiation process would begin once a cabinet mandate has been secured in November after the election.

Officials have agreed to provide Ministers with a weekly update by way of an aide memoire. This aide memoire provides an overview of the latest meeting between officials and Rio Tinto representatives, and other developments. The contents of this briefing are

Officials are meeting weekly with Rio Tinto to progress discussions

Officials from the Treasury, supported by officials from the Ministry of Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE), met with representatives from Rio Tinto on Wednesday 23 September 2020. This was the second all parties meeting to be held. The key outcomes from the most recent meeting were:

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Rio Tinto's closure plan including details on site remediation will not be available until late 2021

The closure plan will include information on site remediation and is therefore a useful source of information for the Invitation to Treat. Rio Tinto indicated at the meeting that closure planning is in the very early stages, a draft will only be available in late 2021, with the final closure plan being available 12 to 18 months later, i.e. around early to mid-2023. This is some time after Rio Tinto's desired mid-December 2020 deadline for agreeing a delayed closure. Officials are currently investigating the best approach to include binding commitments in the Heads of Agreement even in the absence of a closure plan being available by then.

Rio Tinto has not yet provided the information requested by 30 September.

Rio Tinto has not yet provided the information requested on 18 September 2020, which was requested by 30 September. They have expressed reservations about providing such information when there is a risk for this information to be released under the New Zealand Official Information Act. Officials will work with Rio Tinto to better understand the sensitivity of the information and the extent to which it might be covered by commercial in confidence provisions under the Act.

Site remediation is a key issue

In the meeting, officials reiterated the undertaking Rio Tinto gave to Ministers to return the site to 'natural landforms'. Rio Tinto indicated that they are keen to explore opportunities for the site to be repurposed and that their remediation activities will be dependent on the future use of the site. Rio Tinto also indicated that they would at least remediate the site to the applicable minimum legal standards ^{s9(2)(ba)(i)}

The Heads of Agreement will have to clearly define the applicable remediation standards that the Crown desires.

Rio Tinto is approaching a range of Government representatives

It appears a key component of Rio Tinto's negotiating strategy is to directly contact senior government officials, Ministers, and Ministerial staff to apply pressure and create a sense of urgency. Our proposed approach is to refer all such inquiries to the programme team at the Treasury, led by Maureena van der Lem, and to reconfirm with Rio Tinto comfort with the Crown's positions on the importance of each of the four workstreams (including site remediation) and the agreed timelines that are in place.

As an example of this approach, Rio Tinto has engaged in the past week with officials, the Secretary of the Treasury, the Minister of Finance's office and the Minister of Energy and Resource's office. A meeting with the Secretary of the Treasury is now scheduled for Thursday 1 October 2020.

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Officials have also agreed to extend their weekly engagements with Rio Tinto to 90 minutes to ensure all key topics can be given due consideration

Rio Tinto has also recently made recent public statements: “Despite our strong desire to provide certainty for our people and our community, as soon as possible, the Government has told us that no decisions will be made before the election.”

Officials are progressing work on the Crown’s key interests

The Treasury has facilitated workshops with MBIE, MfE and Transpower to advance the key Crown workstreams.

Site remediation workstream

- Key areas of work include:
 - An environmental assessment to ascertain the current state of hazardous material and environmental waste which might include onsite inspections at a later stage (for which Rio Tinto’s permission would be needed) ;
 - Defining the relevant and applicable standards for site remediation, who is responsible for achieving them, and their associated cost.

Workforce workstream

- Key areas of work include:
 - Developing a better understanding of the smelter’s workforce. Demographic information has been requested from Rio Tinto by 30 September but hasn’t been received to date
 - Infometrics produced a detailed report in 2013 about the regional and economic impact of the potential site closure. Officials are currently giving consideration to commissioning an updated report, to inform the Crown’s position on closure.
 - Engagement with the Provincial Development Unit (PDU) at MBIE, MPI and MSD to gather additional workforce data and insights from Southland.

Energy/Transmission workstream

- Key areas of work include:

- s9(2)(ba)(i)

COMMERCIAL-SENSITIVE**Next steps**

- We are entering a confidentiality agreement with Environment Southland and Transpower to enable officials to undertake due diligence on the current condition of the smelter site. Please note confidentiality agreements have already been signed with Meridian.
- We are providing additional information to Rio Tinto on the process and timelines to progress the Invitation to Treat. This information will be provided on Tuesday 29 September.

Ashley Stuart, Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)

Alistair Birchall, Acting Manager, Firm Support, s9(2)(k)

James Shannon, Commercial Advisor, Firm Support,

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Reference: T2020/3233 SH-11-5-1-4-3

Date: 8 October 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: None
(if any)

Aide Memoire: Project 14 – Weekly Update 8 October, 2020**Officials are continuing weekly discussions with Rio Tinto**

At the direction of Ministers, officials are engaging with Rio Tinto regarding potential options for a delayed closure of the New Zealand Aluminium Smelter (NZAS) and are working towards a draft Heads of Agreement (HoA) for Cabinet consideration in November 2020, prior to a final agreement by mid-December 2020. Officials and Rio Tinto representatives meet weekly on Wednesdays.

As highlighted by Ministers at the meeting on 11 September 2020 between Ministers, Rio Tinto and officials, the discussions between the Crown and Rio Tinto are intended to be holistic, comprising:

- Site remediation
- Workforce
- Transmission/energy charges
- Deal structure (support mechanism, level and duration of operations)

Officials from the Treasury, supported by officials from the Ministry of Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE), met with representatives from Rio Tinto on Wednesday 30 September 2020 and again on Wednesday 7 October 2020 for the third and fourth meetings respectively.

Officials are providing Ministers with regular updates by way of an aide memoire. This aide memoire provides updates and key messages from the latest meetings between officials and Rio Tinto representatives, an overview of key engagements with other stakeholders, general project updates and risks/next steps. The contents of this briefing are

COMMERCIAL-SENSITIVE**Recent engagements with Rio Tinto**

The key updates from officials' meetings with Rio Tinto on 30 September 2020 and 7 October 2020 are:

The Crown currently faces information gaps

The Crown does not currently have the information it needs to adequately advance the HoA process in accordance with the timelines that Rio Tinto has stipulated. The current information gaps mean a future Cabinet may find it difficult to provide a mandate for negotiations, as they would have a limited ability to appropriately assess the trade-offs they face in agreeing to a delayed closure.

Officials have been seeking further information from Rio Tinto to understand, among other things, the state of the site, and the legal and regulatory obligations to which NZAS is subject. Information was requested on 18 September 2020 for a response by 30 September 2020. No response was provided by the deadline and Rio Tinto justified this by highlighting their concerns with the application of the Official Information Act.

As a result, officials sent a confidentiality agreement to Rio Tinto on Friday 2 October 2020 to alleviate these concerns, and provide a pathway forward for them providing information to the Crown. A further information request was sent to Rio Tinto on Monday 5 October 2020. This request builds on conversations between Rio Tinto and officials to date and seeks to collate and create one single source of information from which the HoA can be developed. Officials have requested a response to this information request in writing by 12 October 2020.

Rio Tinto indicated in the 7 October 2020 meeting that they are preparing responses to the information request and confidentiality agreement. They are confident they will meet the 12 October 2020 deadline, but did not specify the nature of the response that they will be providing.

On 25 September 2020, Rio Tinto sent officials an early and indicative draft 'HoA'. This only provided very high-level information, with the exception of detailed information on the specific transmission charge reduction Rio Tinto desires. To date, Rio Tinto has not provided any of the other specific information included in the two information requests made by the Crown.

Ministers may have different expectations regarding environmental remediation than those being proposed by Rio Tinto

Rio Tinto's indicative draft 'HoA' commits them to "comply with all legal and regulatory obligations", to prepare a closure study, and to consult and collaborate with the Crown and stakeholders. Rio Tinto has indicated that the closure study will not be available at the time a potential delayed closure agreement is executed, with a preliminary report first expected in late 2021.

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Should Rio Tinto not provide additional information on remediation, the Crown would enter post-Cabinet mandate negotiations with a limited view on the state of the site and the different aspects associated with remediation.

In the meantime, the Crown is undertaking independent work to ensure that, independently of information provided by Rio Tinto, appropriate remediation standards can be included in the HoA in relation to:

1. Management and disposal of hazardous waste stockpiles currently stored on the Tiwai Point site;
2. Site remediation, including any relevant ecological soil guideline value;
3. Tiwai Point landfill and any future risks it might pose to health and or the environment.

Regarding the closure study, officials would expect it to include methods to address the three points above and to be consulted on with iwi, the Crown and the local councils and communities.

Officials have also requested that Rio Tinto provide written permission for onsite environmental inspectors (paid for by the Crown) to visit and undertake testing on the Tiwai Point site. This would likely include the production of an inventory of hazardous waste and property on the site and an assessment of contamination levels. This written permission was sought as part of the 5 October 2020 information request sent to Rio Tinto which is due for response by 12 October 2020.

Transmission Pricing remains the key focus for Rio Tinto

Rio Tinto has signalled that its main focus through these negotiations is on a 'fair and equitable' transmission charge, with less detailed information provided to date on the other areas of Crown interest.

Rio Tinto is seeking a view on the quantum of the potential payment the Crown may provide to delay the smelter's closure. As officials do not currently have a Cabinet mandate to offer any specific number, this may result in relatively stilted discussions on this topic until we have a clear Cabinet mandate.

The Secretary to the Treasury, Caralee McLiesh, met with Kellie Parker, Managing Director of Rio Tinto's pacific operations on 01 October 2020

The meeting was constructive and covered the four main workstreams. Dr McLiesh emphasised that environmental remediation is a core part of any agreement for delayed closure and highlighted the need for Rio Tinto to provide specific information on this issue. Both parties have agreed to regular meetings going forward.

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Significant engagements with other stakeholders

Stakeholder	Engagement to date
Transpower	Officials are engaging regularly with Transpower. s9(2)(ba)(i) [REDACTED]
Meridian	Officials are regularly engaging with Meridian on relevant issues related to the development of a HoA.
Invercargill City Council and Environment Southland	Early engagement with these stakeholders has started and confidentiality agreements are being put in place for both organisations. We are engaging with Environmental Southland on NZAS's discharge consents and with Invercargill City Council on NZAS's land use consents.
Ngāi Tahu	Engagement with Ngāi Tahu will be critical, particularly on remediation. The iwi is holding a regional workshop to lead and drive a regional transition on 9 October 2020. Crown officials, including the manager of the Firm Support team at the Treasury, will be attending this workshop, which will be the first step in our engagement with the iwi.

General Project Updates

Procurement

Procurement for each of the workstreams is progressing well. We expect to have consultants for the remediation and transmission workstreams in place by mid-October 2020. The procurement of these consultants is for the following pieces of work:

- Commissioning environmental consultants and external legal advice to identify relevant and applicable standards for site remediation, who is legally responsible for achieving them and potential associated cost, and
- s9(2)(ba)(i) [REDACTED]

COMMERCIAL-SENSITIVE*Governance*

A Governance Group is in the process of being set up. The proposed membership is Caralee McLeish (Secretary to the Treasury), Carolyn Tremain (Chief executive, MBIE), Andrew Barclay (Independent), Bryan Chapple (Deputy Secretary, Treasury), Andy Hagan (Deputy Secretary, Treasury), Chris Bunny (Deputy Secretary, MBIE), Maureena van der Lam (Director, Firm Support, Treasury), Alistair Birchall (Manager, Firm Support, Treasury) and Jean Le Roux (Manager, Transitions, Regions and Economic Development, Treasury).

Risks/Next Steps*Timing to progress the HoA in order to meet the December 2020 timeline*

Ministers committed at the 11 September 2020 meeting with Rio Tinto that an agreement would be finalised by the end of December 2020. Two factors may impact the ability to secure an agreement within this timeframe:

- The timing of the new Government formation as officials will need to secure a Cabinet mandate before negotiating with Rio Tinto to finalise an agreement within the timeframe committed and;

- s9(2)(ba)(i) [REDACTED]

Next Steps

Information is expected to be provided by Rio Tinto by 12 October 2020 for the Crown's most recent information request sent on 5 October 2020. A draft HoA will then be progressed with the intention to present this to Cabinet once the new Government is formed.

Ashley Stuart, Analyst, Transitions, Regions, and Economic Development, s9(2)(k) [REDACTED]

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, s9(2)(k) [REDACTED]

Jean Le Roux, Manager, Transitions Regions and Economic Development, s9(2)(k) [REDACTED]

Alistair Birchall, Acting Manager, Firm Support, s9(2)(k) [REDACTED]

COMMERCIAL-SENSITIVE



Reference: T2020/3303 SH-11-5-1-3

Date: 15 October 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: None
(if any)

Aide Memoire: Project 14: Weekly Update 15 October 2020

Context

Officials have agreed to provide Ministers with a weekly update by way of an Aide Memoire. This aide memoire provides an overview of the latest meeting between officials and Rio Tinto representatives, and other developments. The contents of this briefing are

On 5 October 2020 officials provided Rio Tinto with an information request, for response by 12 October 2020. The request sought further information from Rio Tinto to understand, among other things, the state of the site, and the legal and regulatory obligations to which NZAS is subject. **While Rio Tinto's response contained new information**, primarily in relation to workforce (in the form of a revised Heads of Agreement (HoA)), **it included limited detail or specificity regarding remediation.**

Officials note a high risk that the current level of information available may not provide Ministers with sufficient reassurance regarding the key areas of Crown interest, particularly in regards to remediation and Rio Tinto's plans to return the site to 'natural landforms'. **Significant information gaps remain**, meaning the Crown will need to consider how it might either (i) gain greater certainty around outcomes as part of any HoA, or (ii) balance the trade-offs associated with an agreement in the absence of that certainty.

Officials are meeting weekly with Rio Tinto to progress discussions

Officials from the Treasury, supported by officials from the Ministry of Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE), met with representatives from Rio Tinto again on Wednesday 14 October 2020 to discuss the Confidentiality Agreement, the information request response and next steps for the process.

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A Confidentiality Agreement was sent to Rio Tinto on Friday 2 October 2020 for return to the Crown by Monday 12 October. This agreement was developed to help alleviate Rio Tinto's concerns around the application of the Official Information Act and to ensure that information could be shared to progress the HoA. Rio Tinto has not provided the signed Confidentiality Agreement. In the 14 October meeting, Rio Tinto indicated that it was likely that **no further information would be provided to the Crown**, even if the agreement was to be signed.

The Crown and Rio Tinto have different perspectives on site remediation and this issue is likely to be contentious in reaching an agreement.

The Crown is seeking specific commitments on site remediation to be included in any agreement for a delayed closure. However, Rio Tinto have indicated that they consider specific details on remediation will be developed later, as part of their closure process, which is due to produce preliminary outputs in late 2021, well after any agreement. Rio Tinto's is reluctant to provide specific remediation assurances, or any related information about applicable standards or intentions:

- Rio Tinto have repeatedly indicated that they **do not see the relevance of providing detailed remediation information** for the HoA development process as this is not connected with transmission charges.
- The Crown's request for an independent environmental consultant to undertake **onsite sampling and testing has been declined**, although previous verbal consent was forthcoming. The refusal was premised on concerns about staff sensitivities.
- Rio Tinto has **declined to provide the high-level closure plan** that is maintained during the life of the smelter, and the associated standards. This information is referenced on their website and in their accounts.
- Rio Tinto has provided assurances that they will remediate the site to the minimum legal standards, however they have **rejected the Crown's request to provide details about the minimum legal standards for site remediation**.
- The assurances to return the site to '**natural landforms**' appear to be a **general sentiment rather than a specific undertaking**, with Rio Tinto unable or unwilling to explain what this would mean in practice for the site.

Next Steps

In the absence of detailed information regarding Rio Tinto's intentions for site remediation, officials are drafting an HoA that defines the standards they expect Rio Tinto to adhere to in order to return the site to "natural landforms", as per the Crown's holistic approach and the high-level undertakings provided by Rio Tinto to Ministers and officials.

This draft HoA will be provided to Rio Tinto on **Monday 19 October**. We expect these standards will exceed Rio Tinto's expectations and that **they may react adversely to the inclusion of such standards**.

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We note that the minimum legal standards for remediation may be appropriate in some areas but there is scope in other areas to include standards that are higher than the minimum legal standards in order for the Crown to achieve the desired holistic approach in reaching an agreement with Rio Tinto.

Officials are working towards a December 2020 timeline. There are two factors that may impact the ability to secure an agreement within this timeframe:

- The timing for the formation of a new government as officials will need to secure a Cabinet mandate before negotiating with Rio Tinto to finalise an agreement within the timeframe committed and;

- s9(2)(ba)(i)

Rio Tinto is continuing to approach a range of Government representatives

Rio Tinto have indicated that they are dissatisfied with the lack of progress towards a HoA, as well as the focus of negotiations on closure planning and remediation. They have continued to directly contact Ministers, the Secretary to the Treasury and senior Government officials to apply pressure and create a sense of urgency.

As an example of this approach, Jennifer Nolan (Director External Relations, NZAS) attempted to set up a meeting with the Minister of Finance in the week prior to the election due to concerns around the lack of progress being made. A letter has also been sent to the Minister of Finance from Alf Barrios (Chief Executive, Aluminium, Rio Tinto) expressing frustration about the timeliness of the process and official's lack of mandate. We assess this to be a negotiating tactic, as these constraints have been known and well communicated since the outset of engagement with Rio Tinto.

Our proposed approach is to refer all such inquiries to the project team at the Treasury, and to reconfirm with Rio Tinto comfort with the Crown's positions on the importance of each of the four workstreams (workforce, tenure, deal structure and site remediation) and the agreed timelines that are in place.

We recommend that you refer to the following key points when engaging with Rio Tinto:

- Reinforce to Rio Tinto that there will not be an agreement without each of the four key issues being substantively addressed, including site remediation, and that any delay in providing information to officials risks delaying the conclusion of a potential agreement.
- Reaffirm that Ministers and officials are aligned, and that officials have a limited mandate in the period prior to a new Government being formed. In this context, the focus of engagement should be on removing barriers that would stand in the way of agreeing a HoA in November. In particular, discussions around the

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quantum of energy / transmission support will move quickly in November 2020 if options around remediation provide Ministers with clarity as to what they are receiving in any agreement.

Crown Officials Visit to Southland

The Crown team are visiting Southland on Thursday 22 October to Friday 23 October 2020 to meet key stakeholders including Iwi representatives, Environment Southland and Invercargill City Council. The purpose of the visit is to discuss the interests and perspectives of these stakeholders and agree how they should be involved in the process going forwards.

Ashley Stuart, Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

James Shannon, Commercial Advisor, Firm Support, s9(2)(k)

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)

Alistair Birchall, Acting Manager, Firm Support, s9(2)(k)



Reference: T2020/3321 SH-11-5-1-4-3

Date: 21 October 2020

To: Minister of Finance (Hon Grant Robertson)

Deadline: 22 October 2020
(if any)

Aide Memoire: Key messages on the status of negotiations regarding a potential extended closure to Tiwai smelter

Key messages

- The Crown has provided a draft Heads of Agreement for Rio Tinto to consider, as per direction from Ministers, with detailed applicable standards and legal requirements on environmental site remediation.
- Rio Tinto have indicated that they find the obligations set out in the draft Heads of Agreement to be unreasonable and unacceptable in relation to site remediation.
- The Crown has requested Rio Tinto's formal response to the HOA by 26 October 2020 and officials welcome any alternative that Rio Tinto wishes to put forward.
- Rio Tinto is pursuing a negotiating strategy which involves engaging with Ministers and officials at various levels and seeking to remove remediation from the negotiating table.
- Meridian has offered Rio Tinto significant financial support to delay closure.

The Crown has provided a draft Heads of Agreement for Rio Tinto to consider, with detailed applicable standards and legal requirements on environmental site remediation

On 19 October 2020, the Crown provided Rio Tinto with a draft Heads of Agreement (HOA). This document builds upon the HOA material Rio Tinto had previously provided, and reflects the holistic approach that the Crown has adopted and advanced in our engagements with Rio Tinto, as directed by Ministers. The draft HOA contains detailed standards on various aspects of site remediation, as this represents a central component of the holistic approach.

Rio Tinto has repeatedly provided assurances to Ministers and officials that its remediation approach will return the site to 'natural landforms'. Officials have requested specific information from Rio Tinto to inform our collective objective of returning the site

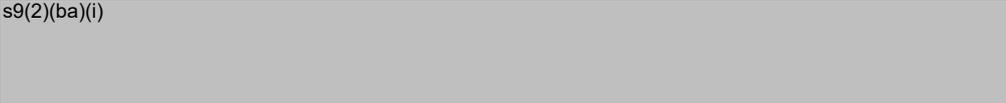
to 'natural landforms'. Rio Tinto has been unable to provide sufficiently detailed information to articulate and define what 'return to natural landforms' means.

The Crown has also requested information about the applicable legal standards that Rio Tinto will remediate the site to. Rio Tinto has declined to provide information about applicable legal standards. In the absence of the requested information regarding the applicable standards and legal requirements required to achieve a return to 'natural landforms' the Crown has defined the standards and requirements that achieve a 'return to natural landforms' in the HOA.

Rio Tinto have indicated that they find the obligations set out in the draft Heads of Agreement to be unreasonable and unacceptable in relation to site remediation.

During the weekly meeting between officials and Rio Tinto on 21 October 2020, Rio Tinto indicated that they found the draft HOA to be unreasonable, particularly regarding environmental site remediation. Rio Tinto also signalled that it is uncomfortable with the level of detail and assurance that the Crown requires regarding its undertaking to 'return to natural landforms'.

Rio Tinto specifically indicated:

- They are uncomfortable making any specific pre-commitments regarding site remediation. They argue that such standards would form part of their closure process, which is due to produce preliminary outputs in late 2021, well after any agreement. They also argue against codifying their existing legal commitments in a binding agreement.
- That the HOA standards are likely to be higher than the level of remediation they had envisaged when undertaking to return the site to 'natural landforms'. They also expressed concerns that some of the standards in the draft HOA appear to go beyond the legal and regulatory minimum obligations. When asked to provide this information to include in the HOA Rio Tinto declined.
- They object to the terms in the draft HOA that relate to the parent companies of NZAS (Rio Tinto and Sumitomo) being liable for the site remediation obligations.
s9(2)(ba)(i)

- They were uncomfortable with the proposed level of Crown involvement in the closure planning process set out in the draft HOA, which would require NZAS to consult with the Crown on the Closure Plan, and to allow the Crown to conduct environmental inspections during the closure planning process.

Rio Tinto also stated that they had a strong preference for any Crown support to be delivered through Transpower and clearly aligned to offsetting transmission payments. Officials reiterated that shareholding Ministers do not have the ability to direct Transpower regarding the amount it charges NZAS and that relief would not be able to

be delivered in the way desired by Rio Tinto. However, officials indicated that they would continue to work with Rio Tinto on alternative payment mechanisms that would offset the smelter's operating costs in return for the extended tenure of the smelter operations.

The Crown has requested Rio Tinto's formal response to the HOA by 26 October 2020 and officials welcome any alternative, equivalent standards Rio Tinto wishes to put forward

In response, the Crown emphasised that the remediation standards proposed in the HOA were developed in the absence of any detailed information being provided by Rio Tinto, even though such information was requested. Officials also stated that the HOA standards and legal requirements are realistic, practical and workable and have been informed by applicable New Zealand laws and regulations with the intention of defining Rio Tinto's undertaking to 'return to natural landforms'.

Officials have requested that Rio Tinto's response to the HOA, by way of a marked-up copy, is provided by Monday 26 October 2020. Through this process, officials would welcome engagement on any alternative requirements Rio Tinto wishes to put forward.

Rio Tinto is pursuing a negotiating strategy which involves engaging with Ministers and officials at various levels and seeking to remove remediation from the negotiating table

Rio Tinto appears to be seeking to circumvent the current Treasury-led negotiating team and strategy.

The Treasury Secretary has previously had an initial meeting with the head of Australasian operations (Kellie Parker). In addition to seeking a meeting with the Minister of Finance last week and again this week, Rio Tinto today requested that the head of Australasian operations, and the members of the Rio Tinto negotiating team, meet with the Secretary late this week or early next week.

We assess that Rio Tinto is engaging in these meetings as a tactic to try and undermine the Crown's holistic approach and will attempt to remove environmental site remediation from the negotiating table.

We note that the appropriate forum for negotiations on the potential extended closure of the Tiwai smelter remains the Treasury-led negotiating team.

Meridian has offered Rio Tinto significant financial support to delay closure

s9(2)(b)(ii), s9(2)(ba)(i)



COMMERCIAL-IN-CONFIDENCE

s9(2)(b)(ii), s9(2)(j)

it appears that Rio Tinto are seeking additional profitability from the Crown, with only nominal conditions.

Next Steps

We envisage providing you, Minister Woods and Minister Parker with a further update next week, after the Secretary's meeting with Kellie Parker and the next scheduled meeting with the Rio Tinto negotiating team (led by Andrew Horvat). We anticipate providing this update on Thursday 29 October 2020. We will then develop advice for Ministers' consideration once government is formed, and at Ministers' direction, a subsequent Cabinet paper seeking a negotiating mandate for the first scheduled Cabinet meeting.

Maureena van der Lem, Acting Director, Firm Support, s9(2)(k)

Andrew Hagan, Deputy Secretary, Financial and Commercial Operations, s9(2)(k)

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)

Reference: T2020/3344 SH-11-5-1-4

Date: 2 November 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: 9am Tuesday 3 November 2020
(if any)

Aide Memoire: Project 14: Engagement on Potential Closure

We are meeting with you on Tuesday 3 November, 2020. The purpose of the meeting is to discuss the engagement with Rio Tinto on a potential extended closure of Tiwai smelter.

Officials require direction on Ministers' objectives in order to reach a potential deal by mid-December 2020. Rio Tinto have rejected the holistic approach (i.e. the inclusion of environmental remediation). Ministers' direction is sought on whether a potential deal that does not include remediation is an option.

This aide memoire provides information to assist the discussion. We have prepared four options for consideration that are outlined in Annex A. The content of this aide memoire is **commercial-in-confidence**.

Key developments

- On 19 October 2020, officials provided a draft Heads of Agreement (HoA) for Rio Tinto to consider, with detailed applicable standards and legal requirements on environmental site remediation.
- On 26 October 2020, Rio Tinto returned a marked-up version of the HoA with significant changes. A key risk of the Crown not being able to secure a parent company guarantee is enforceability if NZAS becomes insolvent. Rio Tinto's changes included removal of key terms in relation to remediation and the parent company guarantee.
- Commercial advisors have indicated that the Tiwai Smelter is a profitable smelter (above the midpoint of Rio Tinto's 13 smelters). It is likely that the Tiwai smelter will achieve significant profitability based on the Meridian energy pricing offer alone and regardless of any potential Crown deal. Accordingly, officials assess that the smelter is highly likely to continue to operate without Crown intervention, this would allow the smelter workforce to be retained and for a more timely transition.

- Rio Tinto has requested a Crown representative to participate in their Closure transition process. Officials are working through the requirements and parameters for this approach, and it is likely the Crown would engage through its Just Transition team, led by the Ministry of Business, Innovation and Employment.
- Indicative assessment shows the net benefits of any potential deal are limited for the Crown. Benefits from NZAS' contribution to transmission are largely offset by the Crown's contributions to the Emission Trading Scheme.
- Our environmental consultants have estimated the cost of site remediation at s9(2)(j) [redacted] s9(2)(j) [redacted]. This is based on the lowest cost most appropriate option (i.e. the removal of the toxic and contaminated material) which materially exceeds the minimum legal environmental standards.
- Any contribution made by the Crown will be in proportion to the cost incurred by Rio Tinto above their existing obligations, meaning the Crown will have to pay to achieve remediation standards above the minimum legal requirements and/or secure solvency protection.
- Officials have had some initial discussions with iwi in relation to the closure. Officials are developing advice and a strategy for ongoing engagement with Māori in relation to the transaction, however, the very short timeframes could create a significant risk of inadequate engagement with potential legal and reputational effects.
- Officials continue to engage with Rio Tinto in an effort to arrive at a draft HoA for potential Cabinet consideration on 16 November 2020 (assuming an agreement by end of December 2020). Our commercial advisors are providing advice about whether Rio Tinto's end of year deadline is a negotiating tactic.

Our assessment of Rio Tinto's position

Rio Tinto have indicated that they will be unable to specify or commit to any remediation standards prior to the completion of their Closure Study. The preliminary outputs of their Closure Study are due to be available in March 2021, with the final report expected in late 2023 or early 2024. Rio Tinto will not undertake any commitments related to remediation or repurposing outcomes until the Closure Study is completed.

Rio Tinto view the nature of the deal to involve the Crown paying for some of Rio Tinto's transmission costs and in return receiving the economic benefit associated with the delayed closure through workforce commitments and benefits to the wider New Zealand economy. Their argument is that a reduction in transmission charges is consistent with the perception of experiencing a continual overcharge over a number of years.

Rio Tinto have expressed confusion and surprise at the inclusion of remediation within the scope of this deal. Remediation is a separate issue for them - one that is already

covered by the regulatory and legal frameworks. They see no need to codify the law into a contractual agreement.

Officials are of the opinion that Rio Tinto are attempting to extract maximum profit – s9(2)(ba)(i) [redacted] and then attempting to extract a back-to-back Crown agreement on transmission pricing. Rio Tinto have provided minimal evidence and denied multiple information requests (made by officials) regarding remediation and solvency.

Next steps

We are scheduled to meet with you on Tuesday 3 November 2020 to seek your direction regarding your objectives for any deal, to inform your potential Cabinet paper, including the preferred option for officials to subsequently negotiate and the parameters within this preferred option. Attached is a proposed agenda for the meeting.

Maureena van der Lem, Acting Director, Firm Support, s9(2)(k) [redacted]

Andrew Hagan, Deputy Secretary, Financial and Commercial Operations, s9(2)(k) [redacted]

Alistair Birchall, Acting Manager, Firm Support, s9(2)(k) [redacted]

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k) [redacted]

Annex A: Summary of options for the Crown's involvement in the closure of the New Zealand Aluminium Smelter

An assessment of the four main options for Ministers in relation to negotiating with Rio Tinto on a delayed closure for the New Zealand Aluminium Smelter (NZAS).

	Option 1: No Crown deal	Option 2: Minimum deal for operating certainty	Option 3: Minimum deal for financial certainty	Option 4: High-end deal to secure higher remediation standards
Description	<ul style="list-style-type: none"> No agreement to extend closure, NZAS likely to continue to operate on basis of Meridian deal Rio Tinto has rejected holistic approach 	<ul style="list-style-type: none"> A deal with minimum payment secures operation certainty and a contractual commitment to perform legal minimum remediation standards 	<ul style="list-style-type: none"> An enhanced deal which includes insolvency commitments from the parent companies to ensure NZAS remediation commitments 	<ul style="list-style-type: none"> Crown payment secures agreement to remediate site above the legal minimum standard, including parent insolvency undertakings
Advantages	<ul style="list-style-type: none"> No additional Crown support Meridian deal supports extended closure 	<ul style="list-style-type: none"> Continued contribution of NZAS to local economy Contractual enforcement rights Enhanced reputation leverage against parent companies 	<ul style="list-style-type: none"> Increased certainty that NZAS and Rio Tinto will meet costs of minimum remediation Solvency risk reduced by parent company resources 	<ul style="list-style-type: none"> Higher remediation standards and increased certainty that NZAS will meet costs
Disadvantages	<ul style="list-style-type: none"> Uncertain outcome No Crown remediation commitments No Crown involvement / decision rights No contractual enforcement rights 	<ul style="list-style-type: none"> No higher standards of remediation Only minimum legal standards secured 	<ul style="list-style-type: none"> Decreased likelihood of agreement No higher standards of remediation Only minimum legal standards secured 	<ul style="list-style-type: none"> Highest cost to secure higher remediation standards Decreased likelihood of agreement Assumes Rio Tinto best party to undertake remediation actions
Fiscal cost	✓	✗	✗✗	✗✗✗
Potential Crown relief	\$0 million	\$30-90 million (\$10-\$30 million pa)	To be quantified	To be quantified
Workforce maintained	✓	✓	✓	✓
Remediation process	✓	✓✓	✓✓	✓✓
Remediation outcomes	✗	✗	✗	✓✓✓
Solvency protection	✗	✗	✓	✓
Likelihood of delivery	✓✓✓	✓✓✓	✓	✗
Stakeholder desirability	✓	✓	✓✓	✓✓✓

Additional elements

Timing – Rio Tinto want an agreement by 31-Dec 2020. They expect to backdate the agreement (to Apr-20) and to have the agreement run past the Aug-24 potential closure date (to Aug-26) to avoid paying additional transmission costs after the cessation of smelting operations.

Delivery Mechanism – two viable options exist for providing Crown relief. A direct Crown payment via contract and a s.7 non-commercial contract under the SOE Act. A direct contract is the preferred option, as it avoids the enforcement constraints, contracting complexity and legal complications of the s.7 approach.

Treaty Partner risk – Ngai Tahu have expressed interest in being involved in the negotiations and in consideration of future uses of the site.

Annex B: Proposed Meeting Agenda

#	Topic	Action sought / questions	Time allotted	Lead
1	Introduction and purpose of meeting	Agenda setting	5 mins	Caralee
2	Context and update <ul style="list-style-type: none"> • Key developments • Recent engagements with Rio Tinto • Crown negotiating strategy to date • Assessment of Rio Tinto's position 	Discuss <ul style="list-style-type: none"> • Commercial advisor insights • Workstream updates • Remediation – environmental costings 	15 mins	Maureena / Alistair
3	Options to secure deal <ul style="list-style-type: none"> • No deal • Minimum deal • High-end deal 	Ministerial direction: <ul style="list-style-type: none"> • Preferred parameters for negotiation • Related risks and trade-offs 	15 mins	Maureena / Alistair
4	Pathway to an Agreement with Rio Tinto <ul style="list-style-type: none"> • Ministerial direction • Draft Cabinet paper for feedback 10-Nov • Cabinet paper lodged 12-Nov • Cabinet meeting 16-Nov • Negotiate deal in remaining Nov/Dec • Agreement by year's end 	Confirm <ul style="list-style-type: none"> • Cabinet paper lead? • Ministerial consultation requirements? • Desire to conform to Rio Tinto's end of year deadline 	5 mins	Maureena / Alistair
5	Actions and next steps	Confirm next steps and assign responsibilities	5 mins	Caralee



TE TAI ŌHANGA
THE TREASURY

Treasury Report: Tiwai Aluminium Smelter Negotiating Mandate Cabinet Paper

Date:	Wednesday 11 November 2020	Report No:	T2020/3324
		File Number:	SH-11-5-1-4-3

Action Sought

	Action Sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to lodge the attached 'Tiwai Smelter Negotiating Mandate' Cabinet Paper.	10.00am Thursday 12 November 2020
Hon Dr Megan Woods Minister of Energy and Resources		
Hon David Parker Minister for the Environment		

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
George Wibberley	Senior Analyst, Transitions, Regions, and Economic Development	s9(2)(k)	N/A	✓
Jean Le Roux	Manager, Transitions, Regions, and Economic Development		N/A	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.
Lodge the attached Cabinet paper by Midday Thursday 12 November

Note any feedback on the quality of the report

Enclosure: Yes

Treasury Report: Tiwai Aluminium Smelter Negotiating Mandate Cabinet Paper

Recommended Action

We recommend that you:

- a. **agree** to lodge the attached Cabinet paper 'Tiwai Smelter Negotiating by Thursday 12 November 2020 for consideration by Cabinet at 1.00pm on Monday 16 November 2020.

s9(2)(k)



Jean Le Roux
Manager, Transitions, Regions, and Economic Development

Hon Grant Robertson
Minister of Finance

Hon David Parker
Minister for the Environment

Hon Dr Megan Woods
Minister of Energy and Resources

Treasury Report: Tiwai Aluminium Smelter Negotiating Mandate Cabinet Paper

Purpose

1. This report seeks your agreement to lodge the attached Cabinet Paper by Thursday 12 November 2020 for consideration by Cabinet at 1pm on Monday 16 November 2020.
2. The paper will update Cabinet on the approach to negotiations with Rio Tinto in relation to the potential delayed closure of New Zealand Aluminium Smelters Limited (NZAS). The Cabinet Paper also seeks \$2 million in funding for expert advice to support the negotiations.

Revisions to draft Cabinet Paper

3. Officials provided a draft Cabinet Paper for you to consider on Monday 9 November. Following your feedback we have attached a revised version of the Cabinet paper for your agreement. This incorporates all of your suggested changes. We have attached both a clean copy of the revised Cabinet Paper and a version with tracked changes.
4. The Minister of Finance requested an additional recommendation to enable Cabinet to *“authorise the Joint Ministers, along with the Prime Minister and the Minister of Economic Development to have Power to Act to conclude a deal if that is necessary in advance of further Cabinet consideration”*. We have included some additional text to ensure that there is clarity on what ‘Power to Act’ means and provide sufficient transparency for Cabinet Ministers when considering this recommendation. We have therefore amended recommendation 11 to:

*“**Authorise** the Joint Ministers, along with the Prime Minister and the Minister of Economic and Regional Development to have Power to Act to conclude a deal if that is necessary in advance of further Cabinet consideration, including the ability to enter into any legal documentation necessary to execute a transaction, to establish or amend appropriations to cover any Crown costs incurred as part of the deal, and consider Treaty obligations”.*
5. The Minister of Finance also requested that an additional statement be included to note Ministers preference that any Crown support is not a direct payment to NZAS but is rather delivered via Transpower. We have included this statement in paragraph 66 and also added some additional text to indicate that *“Legal advice on the possible options for the mechanism of any payment is still being worked through.”* Officials will provide you with this further advice on this matter on Thursday 12 November 2020.
6. As requested by the Minister of Energy and Resources we have inserted some additional text on Labour’s pre-election policy in paragraph 43. This policy states that if bottom lines are not met, or agreement cannot be reached on fair transmission costs for the extended closure period, the Government will shift focus to supporting the workforce and region should Rio Tinto decide to proceed with their original closure date.

7. The Minister for the Environment has requested a range of more substantial changes, which have all been reflected in the revised version of the Cabinet paper:
- Paragraph 28 has been amended to reflect the Minister for the Environment's preference of referring to other options for enforcing remediation requirements, s9(2)(h)
 - Paragraphs 49 and 50 have been inserted to reference other instances where the Crown has been involved in site remediation or clean-up activities, including at the Tui Oil Field and Maitai Paper Mill, amongst others.
 - Recommendation 15 has been inserted, which invites the Minister for the Environment to report back to Cabinet on other instances of Crown funding towards the clean-up of contaminated sites, the legislative frameworks for liability for contaminated sites in other jurisdictions and options for legislative changes.
 - Paragraphs 45 to 48 have been inserted into the paper relating to Environment Southland and Invercargill City Council's ability to investigate the Tiwai Point site under the Resource Management Act 1991 (RMA). These paragraphs note that:
 - the Minister for the Environment cannot direct an investigation under the RMA;
 - the Minister for the Environment is preparing to write to Environment Southland (and Invercargill City Council) to request they undertake an investigation into the Tiwai Point site and offer to provide financial assistance to support this;
 - the Minister for the Environment will request information from the Councils once the investigation is complete, which could lead to other actions under the RMA; and
 - a portion of the new funding sought by this Cabinet paper could be used to support the Councils to undertake their investigations into the site.
 - Paragraph 65 has been amended to reflect the request that Treasury's negotiation team includes an expert on industrial and contaminated sites (from the wider sector).
8. The Cabinet Paper seeks \$2 million in funding for Vote Finance to provide for expert advice and services to support the negotiations. We understand that the Minister of Finance and Minister for the Environment have expressed a preference for a portion of this funding (up to \$300,000) to be used to support Environment Southland to undertake their investigation of the Tiwai Point site. We will provide further advice to the Tiwai Group Ministers in the future to transfer the relevant portion of funding to Vote Environment, once we have further detail on the scope and costs of the investigation that Environment Southland propose.
9. In addition to the above changes, we have made several minor editorial amendments to the Cabinet Paper to ensure that all aspects are consistent with your suggested revisions.

Next Steps

10. Following your agreement, the Cabinet paper will be lodged on Thursday 12 November 2020 for consideration by Cabinet at 1pm on Monday 16 November 2020.
11. Officials will provide you with further advice on Thursday 12 November 2020. This advice will seek your agreement to the negotiating approach and it will also include additional background information requested by you during your meeting with officials on 3 November 2020.

Minister of Finance

Minister of Energy and Resources

Minister for the Environment

Chair, Cabinet

TIWAI ALUMINIUM SMELTER NEGOTIATING MANDATE

Proposal

1. This paper informs Cabinet of the approach that the Minister of Finance, Minister of Energy and Resources, and Minister for the Environment (Joint Ministers) intend to take to negotiations on the potential for a delay to the planned closure of the Tiwai aluminium smelter (Tiwai). Funding to cover negotiating and due diligence costs partly already incurred by the Treasury is sought. This paper also seeks power to act for the Joint Ministers, the Minister for Economic and Regional Development and the Prime Minister to finalise a deal if this is required before Cabinet has the opportunity to consider a final proposal.

Executive Summary

2. New Zealand Aluminium Smelters Limited (NZAS), the owner of the Tiwai aluminium smelter has terminated its electricity agreement with Meridian Energy Limited (MEL) and indicated an intention to cease operations as of 31/8/21. NZAS has indicated a willingness to delay closure if it can negotiate reductions in its cost of delivered energy (i.e. electricity pricing plus transmission cost).
3. Closure of the smelter would have significant short-term impacts. There would be broad impacts to the Southland economy, short-term disruption to the electricity sector, a crystallisation of existing environmental remediation concerns, and a loss of the contribution the smelter makes to transmission grid costs (shifting these costs onto other consumers). However, from the Crown's perspective there will be a fiscal saving from reduced Emissions Trading Scheme (ETS) expenses.
4. MEL has offered NZAS a new electricity pricing agreement running until August 2024 that includes significant cost reductions as MEL has no short-term options to sell the majority of the relevant generation output to other customers. NZAS has not agreed to the MEL offer but the deal remains on the table. NZAS wants to negotiate transmission pricing relief before returning to potentially conclude the new electricity agreement s9(2)(ba)(i), s9(2)(j)

5. Transpower New Zealand Limited (Transpower) is a regulated monopoly that generally has no discretion to negotiate transmission price reductions with an individual customer. To provide transmission pricing relief to NZAS in these circumstances requires direct Government involvement.
6. The Government has publicly indicated an intention to negotiate to keep the smelter operating for another three to five years if satisfactory workforce commitments and site remediation bottom lines are achieved.
7. This paper outlines the approach that Joint Ministers intend to take to secure the Government's economic and environmental goals. The context to the negotiations is that the Government's commercial advisors have concluded that the MEL deal on its own is sufficiently generous to make it relatively unlikely that Tiwai will close in August 2021. Any Government deal is only incremental to MEL's and is unlikely to be determinative of whether s9(2)(ba)(i) [REDACTED]. The benefits of a Government deal would be limited to increased certainty of delayed closure if Ministers wished to limit any remaining risk of closure, and any environmental remediation enhancements secured. Economic and electricity market outcomes will be secured without a Government deal if NZAS accepts the MEL deal and continues operations anyway as NZAS will be incentivised to operate the facility at capacity. For clarity, we note that NZAS' negotiating stance has been that transmission cost reduction was a necessary requirement for accepting the MEL deal. s9(2)(ba)(i) [REDACTED]
8. The most important aspect of Joint Ministers proposed negotiation approach therefore is the environmental remediation bottom line. It states that any deal must include commitments to specific actions to remediate individual sources of contamination or mechanisms to increase certainty that Rio Tinto will carry out site remediation (e.g. funds set aside for remediation in a manner that provides sufficient certainty that those funds will be used for the specified purpose, parental guarantee). s9(2)(h) [REDACTED]
9. If it is possible, Joint Ministers will return to Cabinet for approval if a satisfactory deal can be negotiated for the delayed closure of NZAS, including any necessary appropriations to cover payments the Crown may make under a deal. Otherwise Power to Act Ministers will make a determination under the power to act sought from Cabinet.

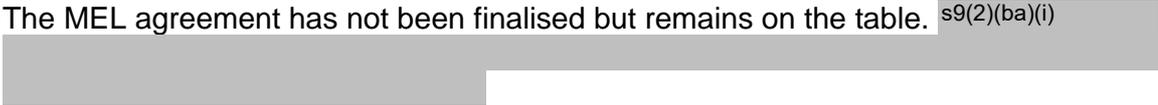
Background

The smelter owners are seeking a reduction in the cost of delivered energy

10. The Tiwai aluminium smelter is owned by New Zealand Aluminium Smelters Limited (NZAS). NZAS is 79.36 per cent owned by Pacific Aluminium (New Zealand) Limited (which is part of the Rio Tinto group) and 20.64 per cent owned by Sumitomo Chemical Company Limited, a Japanese company. NZAS consumes around 13% of New Zealand's annual electricity production. It sources its electricity through direct purchase from the wholesale electricity market, which is then offset through a financial hedge contract with Meridian Energy Ltd (MEL) and pays transmission charges to

Transpower New Zealand Limited (Transpower). NZAS is seeking to reduce its cost of delivered energy.

11. The most recent version of the MEL contract was negotiated in 2013 and scheduled to run until 2030. It included an option for NZAS to terminate the contract early by providing 12 months' notice. NZAS has now taken the option to terminate the contract with effect from 31/8/21.
12. Transmission constraints mean that there is no other short-term option available to MEL to sell the electricity currently supplied to Tiwai to other users¹. If the smelter were to close MEL would end up spilling additional water at Manapouri rather than using it to generate electricity. ^{s9(2)(h)}

13. The MEL agreement has not been finalised but remains on the table. ^{s9(2)(ba)(i)}

14. Transpower is a regulated monopoly. Transpower is generally required to calculate charges for transmission services in accordance with the Transmission Pricing Methodology (TPM). NZAS has long held the view that the current TPM imposes excessive cost on the smelter. An amended TPM that would reduce charging to NZAS is planned but there is no certainty that it will come into effect in a timely manner and in NZAS' eyes it is too late, and the price reduction is insufficient.
15. As Transpower is required to calculate NZAS' charges in accordance with the TPM (and in these circumstances cannot negotiate a reduction in those charges), NZAS has been dealing directly with the Government to argue for transmission pricing relief. The intention is that any Government deal would be parallel to the MEL deal and also run to August 2024.

Government Approach to Date

16. Prior to the election the Labour Party indicated its intention, if elected, to negotiate to keep the smelter operating for another three to five years. The Government is interested in a broader set of issues than NZAS with respect to a just transition for the Southland economy. We have noted commitments to job retention and site remediation as bottom lines.
17. The Ministry for Business Innovation and Employment's (MBIE) Just Transition, Provincial Development, and Regional Skills Leadership groups have been engaging with Southland regional stakeholders given the potential closure of Tiwai. To date, this

¹ Currently, Transpower estimates around one sixth of Manapouri's generation on average (as it is highly variable depending on rainfall) can be sold elsewhere. However, once scheduled transmission upgrades are completed in two to three years this will increase to around two thirds.

work has focused on establishing relationships and gathering information should a Just Transitions process be required.

18. A project team has been established at the Treasury and includes officials from the Energy Resource Markets team at MBIE and from the Ministry for the Environment (MfE). Work to date has focused on information gathering and high-level discussions with Rio Tinto representatives on behalf of NZAS to identify scope for a heads of agreement. Following this Cabinet update, negotiations will move to a more detailed specification of the nature of a deal that Ministers are prepared to consider. Outlined below is a discussion of the benefits that could accrue from a delayed closure of the smelter in order to then frame the negotiating approach for Joint Ministers to pursue.

Impact of Tiwai Closure

19. The impacts of a Tiwai closure are a mixture of direct financial flows, such as impacts on transmission revenue and Government emissions trading scheme (ETS) revenues, and broader economic impacts and environmental concerns. The fact that there are economic impacts from a firm closing is not in itself a reason for Government intervention but NZAS is a large employer that has a significant impact on its region and its level of electricity demand will have significant flow on impacts through the electricity market.

Direct Financial Flows

20. As noted above, **transmission costs** are allocated in accordance with the regulated TPM. When NZAS closes, total transmission prices for the grid as a whole will remain the same, but the allocation between users will change as NZAS' share of transmission costs will be transferred onto other consumers.
21. NZAS' assessed transmission costs are \$59.7m for 2020/21, and according to the Electricity Authority will be around \$52.2m for 2021/22. Costs for NZAS are expected to fall to around \$42m per annum under the new TPM which is expected to apply from 2023/24. When NZAS exits, however, these annual charges would be transferred to other electricity consumers. The Electricity Authority has estimated that the impact on an average consumer would be an average price increase of around \$10 per annum or less. However, this price increase will not be spread evenly across consumers. Southland consumer bills are expected to increase by an expected \$22 per annum and the expected increase for SMEs is more pronounced at around \$89 per annum. Averaging can also mask the effects on larger consumers which may be significant. The expected increase to Refining NZ of a closure of NZAS, for example, is expected to be around \$350,000 per annum. Delayed closure of the smelter delays these cost increases for other consumers but will not avoid them altogether unless new electricity demand is added to the system.
22. Under the **ETS**, NZAS receives an industrial allocation of emission units from the Government for 90% of NZAS' direct emissions, because of NZAS' status as an emission intensive, trade exposed activity. Allocations are based on carbon emissions per unit of output, using the 2006-2009 period as a baseline. NZAS can benefit from any emissions intensity reduction it has subsequently achieved, by selling spare emission units. The majority of NZAS' allocation of emission units is for the indirect

costs of NZAS' electricity use reflecting the expectation that the ETS increases wholesale electricity prices.

23. NZAS is a net supplier of emission units into the market and therefore benefits from the current ETS system. It is projected that NZAS will receive roughly 1.5 million emission units per annum between 2021 and 2025 and will surrender 600,000 units for its direct emissions. Assuming the current approximate emissions price of \$35 per unit, the value of the surplus units NZAS receives is around \$31.5m per annum, a net fiscal cost to the Crown. Under delayed closure this net fiscal cost continues. If the smelter closes, the Crown gains through avoiding the cost.

Broader Impacts

24. NZAS has a significant impact on **economic activity**² within Southland. Direct employment is estimated to be 764 full time equivalent jobs, but flow-on effects raise this by more than three-fold to an estimated 2379 jobs. Total employment attributable to NZAS accounts for about 5.1% of Southland's FTE employment. Approximately 1330 of these jobs are estimated to be at risk of being lost if NZAS ceases operations at Tiwai Point.
25. The reduction in Southland's GDP in the first year of total closure may be around \$165m, reducing to zero over 3-4 years. Given the degree of dynamism in Southland's economy, such losses should be largely absorbed by 3-4 years of normal economic growth, although the pace of recovery would also depend on how many people would move out of the region. Infometrics notes that NZAS redundancy payments and transitional assistance from Government could mitigate the short-term economic impacts of closure.
26. There are a number of potential **environmental remediation** concerns that would crystallise at the point of closure of the smelter. Decades of aluminium smelting operations at Tiwai Point have created a significant volume of hazardous toxic waste and contamination at the Tiwai Point site. Following closure there will be a need to remediate the site to manage ongoing risks to human health and the environment.
s9(2)(h)
s9(2)(h) Future use of the site may also influence the level of remediation required.
27. The Treasury's environmental consultants have advised that a reasonable range of probable costs for overall remediation works at Tiwai Point would span between s9(2)(j) million.³ There is a high degree of uncertainty about what level of remediation would be considered as satisfactory in terms of societal expectations, and thus the eventual remediation costs. Elements of the site for remediation fall into three categories: (i) stockpiles of spent cathode lining⁴; (ii) the Tiwai Point landfill and contaminated areas of the industrial precinct; and (iii) above and below ground infrastructure. There are a range of toxic materials (including cyanide, heavy metals and asbestos), and the low-lying nature of the site and sandy coastline present risks

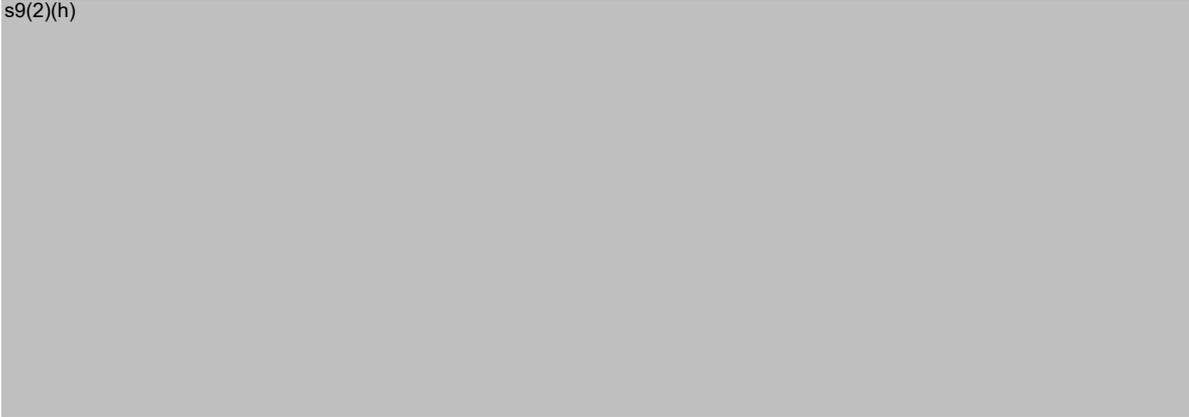
² Economic information sourced from "Estimation of the Economic and Social Impacts of the Tiwai Point Aluminium Smelter on the Southland Economy", Infometrics, November 2020.

³ Note that this estimate is based on consultants carrying out a desktop study within restricted timeframes. Consultants were not able to access the site or carry out soil testing.

⁴ Spent cathode lining (also known as spent pot lining) is toxic, corrosive and reactive with water.

from coastal erosion and saltwater intrusion into the landfill. A coastal climate change risk assessment undertaken by the environmental consultants assessed both coastal erosion and saltwater intrusion as extreme risks and the suggested response in the risk framework is to avoid or eliminate the threat. In negotiations, Rio Tinto has focused on uncertainty surrounding the future use of the Tiwai Point site as a reason why environmental remediation obligations cannot yet be determined. To some extent, it is correct that the best approach to remediation depends on the future use of the site. However, there are aspects of the site that will require remediation regardless of the future use. These include significant remediation actions (such as removal of spent cathode lining and appropriate treatment of landfill material) that may be necessary to manage the release of contaminants.

28. s9(2)(h)



29. s9(2)(ba)(i)



30. Closure of Tiwai would also have implications for the **electricity sector**. As noted above, MEL would be unable to efficiently manage electricity production at Manapouri and large volumes of water would be spilled due to the inability to transport all the electricity to customers outside of Southland. Potential new generation projects may be put on hold as generators face uncertainty around potential oversupply once Manapouri output can be transported north. Similarly, some early retirement of older North Island thermal plant is expected if the smelter closes and Manapouri generation is sent northwards. However, such thermal station closure may in turn precipitate its replacement by new geothermal generation. Overall, a smelter closure will be disruptive to the electricity market but the final outcome is uncertain.
31. In combination these effects would hasten New Zealand's move towards a fully renewable electricity system. While New Zealand's greenhouse gas emissions would fall with smelter closure, overall climate change impacts would likely be negative as the lost aluminium production would likely be replaced by a more emissions intensive overseas producer using coal and gas fired generation.

32. In summary, closure would lead to a loss of the smelter's contribution to total transmission costs, broad impacts to the Southland economy, some disruption to the electricity sector, and a crystallisation of existing environmental remediation concerns. The Crown would achieve a gain through reduced ETS expenses. A delayed closure could facilitate a smoothing of the economic and electricity sector impacts. Planned renewable energy projects such as Contact Energy's Tauhara Geothermal project, that has been paused due to uncertainty over NZAS' future, would be resumed. Economic impacts could be mitigated by employees and other Southland businesses having time to plan for life after the smelter in tandem with Government transitional assistance. New transmission capacity, scheduled for completion by 2022/23, will alleviate constraints and allow for the northwards transportation of much of Manapouri's output. The Government will also try to achieve improved certainty around the level of remediation that NZAS will undertake.

Negotiating Approach

33. The approach outlined below specifies some bottom lines to represent the type of deal that could satisfy the Government's economic and environmental goals. Joint Ministers will return to Cabinet for approval if a satisfactory deal can be negotiated, subject to the ability to do so, otherwise Power to Act Ministers will make a determination under the power to act sought from Cabinet.

NZAS perspective

34. It is important to understand NZAS' financial position in order to assess how it will respond in negotiations. In particular, it gives an indication of the actual likelihood of closure given that the MEL offer provides substantial gains to NZAS. If closure is unlikely to occur, even without a Government deal, the Government needs to be sure that it is getting something of value in exchange for any payments it may make as part of the deal.
35. It is not possible to directly observe the profitability of the smelter as it is part of a vertically integrated production chain within the Rio Tinto group. Our commercial advisors, however, have provided us with financial modelling to estimate the profitability of the smelter as a stand-alone operation. In addition, we have considered the smelter's competitive position with respect to the remainder of Rio Tinto's portfolio of smelters and other global competitors.
36. Aluminium and alumina prices are volatile, meaning profitability is volatile and losses occur in years with particularly poor trading conditions. Our advisors, however, have modelled underlying EBITDA⁵ of the smelter over time and calculated an average figure. The purpose of the calculation is not the EBITDA figure itself but the change in level that is generated by the new MEL supply contract. As noted above, electricity costs for the smelter will decline significantly under the new MEL deal, and this cost reduction directly increases EBITDA. The underlying profitability of the smelter is significantly improved by the new MEL contract with average EBITDA potentially tripling.

⁵ Earnings before interest, tax, depreciation, and amortisation

37. Rio Tinto has a portfolio of 13 smelters around the world. Our advisors' estimation is that Tiwai ranks fifth of these smelters in terms of its cash margins. The new MEL deal would improve Tiwai's position to third in Rio's portfolio.
38. Our commercial advisors believe that the enhancement to Tiwai's profitability and competitiveness from the new MEL deal is sufficiently significant to consider that closure in August 2021 may be unlikely. This may mean that the benefits of concluding an additional Government deal providing transmission cost relief are very limited as the Government's goals around employment retention and regional economic development may be achieved without a direct Government deal. However, we note that NZAS' negotiating stance to date has been that the MEL deal is insufficient by itself without additional transmission reduction. This view is supported by MEL. From its negotiation experience with NZAS it believes that the issue of transmission pricing is one of principle. MEL reports that NZAS believes it has been over-charged for transmission for many years and that some reduction in costs is critical to a deal being agreed.

Government's Approach

39. While NZAS may continue operations under the new MEL deal irrespective of a separate Government deal on transmission price relief, this is not certain. The benefits of a Government deal therefore are:
- 39.1 increased certainty of delayed closure to support a just transition, and
 - 39.2 environmental remediation commitments are secured as part of the deal.
40. The costs of a deal will be the financial impact of concessions to NZAS plus the potential precedent effect that could be created. There are other large industrials that are experiencing financial difficulties and may approach Government for financial support in exchange for continued operations.
41. To date, Government representatives in discussions with Rio Tinto have been offering a payment (of an unspecified amount) to limit NZAS' transmission costs to a reduced fixed price for MWh in exchange for:
- 41.1 a requirement to retain a minimum number of full-time employees for the period of operational extension – this is not contentious as NZAS has a strong incentive to run the smelter at full capacity, and
 - 41.2 Environmental remediation enhancements, such as:
 - 41.2.1 Certainty of remediation delivery – through measures such as parent company guarantees and/or environmental bonds
 - 41.2.2 Specification of specific activities that NZAS is contractually required to undertake – removal of spent cathode lining, removal of the landfill
 - 41.2.3 Specification of process requirements – a comprehensive closure study, independent expert assessment and review, consultation and

community involvement, inclusion of investigation of repurposing options for the site.

42. The view of the negotiating team is that the likelihood of significant environmental enhancement being agreed is small. s9(2)(ba)(i)

It is possible that that position only reflects Rio's initial negotiating stance and that it may be prepared to make environmental concessions as the negotiation progresses but there is no evidence of this to date. A risk for the Government in the negotiations, particularly if the Government was to commit to significant remission of transmission costs, is the risk of paying for something that NZAS was legally obliged to do or going to do anyway. There are also risks around paying NZAS to deliver an environmental activity the Government seeks rather than the alternative option of the Government directly controlling the delivery of that activity.

43. Our overall approach, therefore, recognises that any deal between the Government and NZAS is incremental and unlikely to be determinative around closure. The Government needs to be ready to walk away if there is doubt that genuine net benefits can be delivered. Labour's pre-election policy was clear that any reduction in transmission costs must be fair, not just for NZAS, but also for New Zealand. The policy stated that if bottom lines are not met, or agreement cannot be reached on transmission costs for the extended closure period, the Government will shift focus to supporting the workforce and region should Rio Tinto decide to proceed with its original closure date next year. The following negotiating approach is proposed:

43.1 Workforce commitments bottom line:

- 43.1.1 During the Operational Period, NZAS will commit to maintain no less than the following number of full-time equivalent employees under normal operating conditions:

s9(2)(ba)(i)

- 43.1.2 The Closure Plan must include provisions detailing steps by which employees would be offered support to reskill for potential transition to working in new industries.

43.2 Environmental Remediation Bottom Line

- 43.2.1 The deal must include commitments to specific actions to remediate individual sources of contamination or mechanisms to increase

Treasury:4376768v1

certainty that Rio Tinto will carry out site remediation (e.g. funds set aside for remediation in an manner that provides sufficient certainty that those funds will be used for the specified purpose, parental guarantee).

43.3 s9(2)(ba)(i)

44. If a deal can be negotiated that meets or exceeds these requirements and there is sufficient time Joint Ministers will return to Cabinet for approval including any necessary appropriations to cover the cost of the deal. This paper seeks power to act for the Joint Ministers, the Minister for Economic and Regional Development and the Prime Minister to finalise a deal if this is required before Cabinet has the opportunity to consider a final proposal. This power to act includes the ability to enter into any legal documentation necessary to execute a transaction, to establish or amend appropriations to cover any Crown costs incurred as part of the deal, and consider Treaty obligations.

s9(2)(h)

Crown intervention in site remediation

49. There have been a number of instances in recent years whereby the Crown has had to intervene and provide significant financial contributions to address hazardous or contaminated sites. Insolvent companies have left behind hazardous substances, contaminated land, or other environmental hazards, creating a vacuum of responsibility which has led to Crown intervention to mitigate future impacts from these

sites. This includes Crown contributions to the remediation or clean-up of the following sites:

- 49.1 Tui oil field following the liquidation of Tamarind Taranaki Limited, estimated to be around \$155m;
 - 49.2 aluminium dross by-product (known as Ouvea Premix) stored at the Mataura Paper Mill and other locations in Southland, ^{s9(2)(j)}

 - 49.3 Sustainable Solvents site at Ruakaka, Northland, being \$2m including a \$400,000 contingency towards an estimated total project cost of \$3m;
 - 49.4 Concours electroplating, Timaru, being \$1m plus \$200,000 for site investigations (in addition to Council contributions).
50. The Minister for the Environment intends to investigate options to address this pattern of Crown intervention to remedy private/commercial environmental liability.

s9(2)(h)



s9(2)(h)

Treaty of Waitangi and Treaty Partner considerations

56. Tiwai Point sits within the takiwa (rohe) of Ngāi Tahu. The tribal council of Ngāi Tahu is Te Rūnanga o Ngāi Tahu. The four Ngāi Tahu papatipu rūnunga (regional organisations with representatives on Te Rūnanga o Ngāi Tahu) at the southern end of te Waipounamu are Hokonui Rūnanga, Waihōpai Rūnaka, Awarua Rūnanga and Ōraka-Aparima Rūnaka.
57. Due to the timeframes that officials have been working within, and the speed of the work to date, a full Treaty of Waitangi (the Treaty) analysis has not been completed. However, work is being progressed on an urgent basis by officials towards an engagement plan utilising the Te Arawhiti Engagement Framework and Guidelines which is consistent with the Crown's Deed of Settlement with Ngāi Tahu and includes an analysis of the Crown's Treaty position in relation to this project.
58. To date, Ministers and officials have had some initial discussions with Ngāi Tahu representatives.
59. In these initial discussions Ngāi Tahu, has advised that the key areas of priority for iwi are:
- 59.1 Remediation of the land at Tiwai Point;
 - 59.2 The people in the area, including employment;
 - 59.3 Reuse of the land in the future;
 - 59.4 The ability of the people in the area to be able to continue to access the resources provided to the community from Lake Manapouri, and
 - 59.5 To be a critical partner in the Just Transitions planning for future uses of the site.
60. We note the deal currently being considered is only one facet of the Maori-Crown partnership in respect of the withdrawal of NZAS from Tiwai Point. The Just Transitions and Southland Regeneration workstreams are much longer term. The focus at present is on an engagement plan for the immediate future relating to the negotiation of a deal with NZAS. However, the engagement plan will contemplate those future and longer term workstreams.

61. s9(2)(h)

s9(2)(h)

62.

63.

64. To mitigate both of these risks, officials are seeking to ensure the Crown acts as a good Treaty partner in this project through establishing and maintaining an open and transparent relationship with the representatives of Ngāi Tahu. Officials consider that by fulfilling the role of a good Treaty partner the Crown is both addressing the risks outlined above, and ensuring the Crown reaches the best final position in the project.

Financial Implications

65. A negotiating team has been established that includes expert advisory roles covering legal, commercial, and environmental technical expertise. Minister Parker has asked that an expert on industrial/contaminated sites be added to the team. The budgeted cost of the negotiating team finalising a deal is \$2m. In addition, Minister Parker has proposed funding for a contribution to Environment Southland of up to \$300,000 for an environmental investigation of Tiwai Point. An appropriation for Vote Finance for \$2.3m is recommended, which will have a corresponding impact on the operating balance and net core Crown debt. These costs cannot be absorbed within existing baselines.
66. The cost to the Crown of a reduction in transmission revenue from NZAS will be dependent on the final outcome of negotiations. It is the preference of Ministers that this is not a direct payment to NZAS but is rather delivered via Transpower. Legal advice on the possible options for the mechanism of any payment is still being worked through.
67. If a deal can be negotiated, Joint Ministers will return to Cabinet for approval. If it is necessary for a rapid decision to be made it is our recommendation that Joint Ministers are given power to act, working with the Prime Minister and Minister for Economic and Regional Development, including the ability to establish or amend any appropriations necessary to cover the Crown costs for the deal.

Legislative Implications

68. None.

Consultation

69. The Energy Resource Markets team at MBIE and the Ministry for the Environment have been jointly involved in the negotiating team and have been consulted on this paper and their views reflected. The Department of Prime Minister and Cabinet and Department of Conservation have been consulted and their views have been reflected.
70. Over the course of the project members of the negotiating team have met with representatives of Ngāi Tahu, Environment Southland, the Invercargill City Council, and the Southland Chamber of Commerce to understand regional views on the smelter and the impacts of a potential closure.

Communications

71. No proactive announcements are planned until negotiations conclude and any agreement is reached. If agreement is reached, consideration could be given to proactive announcement perhaps including Ngai Tahu as Treaty partner and the community as key stakeholders.
72. There are risks that NZAS may make public statements or continue in efforts to circumvent the negotiation by addressing Ministers, officials or parties (including Ngai Tahu and the Southland community) directly as part of its negotiating strategy.
73. Should negotiations conclude without reaching agreement, Ministers will take a proactive stance in communicating the reasons why this has occurred, and to address arising concerns for the community (including workforce, remediation).

Proactive Release

74. No proactive release of this Cabinet paper is proposed until the conclusion of the negotiating process. Premature release of the Cabinet paper would undermine the Crown's negotiating position. In the event of eventual proactive release, confidential, commercially sensitive, and "inside" information will be redacted.

Recommendations

The Minister of Finance, Minister of Energy and Resources and Minister for the Environment recommend that Cabinet:

1. **Note** that New Zealand Aluminium Smelters Limited (NZAS), the owner of the Tiwai aluminium smelter, has given notice to terminate its electricity price agreement with Meridian Energy Ltd (MEL) and indicated an intention to cease operations as of 31/8/21.
2. **Note** that closure of the smelter would have significant short-term impacts on the Southland economy and the electricity sector and crystallise existing environmental remediation concerns.
3. **Note** that MEL has offered NZAS a new pricing agreement including significant price reductions that would run until August 2024

4. **Note** that NZAS also wants to negotiate transmission price relief (as it argues the MEL deal alone is insufficient) and has been discussing this directly with Government as Transpower is required to calculate NZAS' charges in accordance with the Transmission Pricing Methodology and cannot negotiate a price reduction with NZAS.
5. **Note** that the Government has publicly indicated an intention to negotiate to keep the smelter operating for another three to five years if satisfactory workforce commitments and site remediation bottom lines are achieved.
6. **Note** that the Government's commercial advisors have concluded that the MEL deal on its own is sufficiently generous to make it relatively unlikely that NZAS will close in August 2021, s9(2)(ba)(i)
7. **Note** that the benefits of any Government deal are only incremental to those generated by the MEL deal and are limited to increased certainty of delayed closure and any environmental remediation enhancements secured.
8. **Note** that the Minister of Finance, Minister of Energy and Resources, and Minister for the Environment (Joint Ministers), intend to negotiate an agreement for a delayed closure of the Tiwai aluminium smelter that includes conditions which meet or exceed the following requirements:

s9(2)(ba)(i)

- 8.2 The Closure Plan must include provisions detailing steps by which employees would be offered support to reskill for potential transition to working in new industries.
- 8.3 The deal must include commitments to specific actions to remediate individual sources of contamination or mechanisms to increase certainty that Rio Tinto will carry out site remediation (e.g. funds set aside for remediation in a manner that provides sufficient certainty that those funds will be used for the specified purpose, parental guarantee).
- 8.4 Remission of transmission charges to apply from 31/8/21 for a period to match the duration of the MEL deal
9. **Note** that Joint Ministers will return to Cabinet for approval of any deal that can be negotiated that meets these requirements.

10. **Note** that the Minister for the Environment will request information from Environment Southland (and Invercargill City Council) on their plans to investigate activities at Tiwai Point.
11. **Authorise** the Joint Ministers, along with the Prime Minister and the Minister for Economic and Regional Development to have Power to Act to conclude a deal if that is necessary in advance of further Cabinet consideration, including the ability to enter into any legal documentation necessary to execute a transaction, to establish or amend appropriations to cover any Crown costs incurred as part of the deal, and consider Treaty obligations.
12. **Approve** the following changes to appropriations to provide for the Tiwai Aluminium Smelter negotiations, with a corresponding impact on the operating balance and net core Crown debt:

Vote Finance Minister of Finance for Portfolio Finance	\$m – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Multi-Year Multi-Category Appropriation Expenses and Capital Expenditure: Policy Advice and Financial Services MCA Departmental Output Expense: Policy Advice (funded by revenue Crown)	2.300	-	-	-	-

13. **Agree** that the proposed changes to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.
14. **Agree** that the expenses incurred under recommendation (10) above be charged against the between-Budget contingency established as part of Budget 2021.
15. **Invite** the Minister for the Environment to report back to Cabinet on:
- 15.1 other instances of Crown funding towards the clean-up of hazardous or contaminated sites;
 - 15.2 the legislative frameworks for liability for hazardous or contaminated sites in other jurisdictions; and
 - 15.3 options for legislative changes to address environmental liability from insolvent commercial activities.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance



TE TAI ŌHANGA
THE TREASURY

Treasury Report: Project 14: Tiwai Aluminium Smelter Negotiating Approach

Date:	13 November 2020	Report No:	T2020/3442
		File Number:	SH-11-5-1-4-3

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	<p>Indicate whether you wish to provide additional Crown support for NZAS to delay closure.</p> <p>If you wish to provide support, Indicate which option you would like as a starting point for negotiations and agree the quantum of support and your preferred mechanism for delivery.</p> <p>Agree to meet officials on the morning of 18 November 2020 to discuss this report.</p>	16 November 2020
Hon Dr Megan Woods Minister of Energy and Resources		
Hon David Parker Minister for the Environment		

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
George Wibberley	Senior Analyst, Transitions, Regions, and Economic Development	s9(2)(k)	N/A (mob) ✓
Jean Le Roux	Manager, Transitions, Regions, and Economic Development		N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure:

Treasury Report: Project 14: Tiwai Aluminium Smelter Negotiating Approach

Executive Summary

- This report seeks your agreement to the negotiating approach to be taken in engagements with Rio Tinto regarding the delayed closure of New Zealand Aluminium Smelters Limited (NZAS).
- Meridian Energy Limited (MEL) has offered a substantial discount on its electricity agreement with NZAS if the smelter continues operations until August 2024. Our commercial advice suggests that NZAS is unlikely to close, even if additional Crown support is not provided. Any deal is likely to be incremental with limited additional remediation benefits. There remains a limited risk that NZAS decide to close, either for other strategic reasons. However, Rio Tinto's strongest negotiation tactic is to threaten to cease operations and exit.
- Ministers need to decide whether to offer any substantive Crown support. In the view of officials, a no-deal may prove the best outcome, and the Crown needs to be ready to walk away from negotiations if there is doubt that genuine net benefits to the Crown will be delivered. However, Ministers may choose to provide support to mitigate the residual risk of closure.
- If Ministers decide to provide substantive Crown support, there are three main options to target:
 - Option A: Low cost option with limited site remediation but a high deal certainty.
 - Option B: Medium cost option that provides additional surety that NZAS will meet their existing obligations on site remediation.
 - Option C: High cost option targeting higher environmental outcomes. The probability of achieving this option is likely to be very low.
- Under Option A, the remediation enhancements compared to the status quo are:
 - the addition of a contractual basis for enforcement of the delivery of existing legal environmental obligations
 - a contractual right for independent on-site inspections over and above existing RMA rights, and
 - a commitment to a closure process that incorporates community and government involvement in remediation outcomes for re-use and repurposing the site.
- Options B and C would build off this and seek additional remediation enhancements.
- Officials recommend option A as a starting point and offering only \$5 million per annum to Rio Tinto for three years for a deal with those characteristics. This is an opening position designed to get Rio Tinto to engage in the negotiations and it is expected there may be some iterative

offers. Using option A as a starting point would still enable the Crown to move to options B and C as future negotiating positions.

- The first best option for delivering financial relief to NZAS is via a direct Crown payment. The use of section 7 of the State Owned Enterprises Act 1986 (the SOE Act) to deliver support is feasible, although there are disadvantages with this approach in terms of complexity, reduced enforcement options and narrative and precedent effects. Section 7 is a more viable option if no remediation outcomes are sought. The Treasury's independent legal advice confirms this position (legally privileged).
- Any Government agreement should run from 1 September 2021 to 31 August 2024 to match the terms of the proposed MEL deal.
- There are risks that NZAS or Rio Tinto may make public statements or approach stakeholders directly during negotiation of a particular option as part of their negotiation strategy. Officials have drafted reactive statements which could be quickly finalised should Rio Tinto make any public statements that require a Crown response.
- This report also provides additional information requested by you during your meeting with officials on 3 November 2020 on:
 - The existing legal obligations for NZAS in relation to remediation.
 - NZAS' director obligations and Sumitomo's involvement in the Crown's negotiation strategy.
 - Precedents across Rio Tinto's global business regarding environmental outcomes or issues and employment relations.
 - Information sharing and options to involve Ngāi Tahu in the negotiation process and beyond.
- Given the substantial amount of material and key decisions set out in this report, officials see benefit in meeting with the Tiwai Group Ministers to discuss your feedback before the next negotiation scheduled with Rio Tinto at 2:00pm on 18 November 2020.

Recommended Action

We recommend that you:

- a. **Note** that officials are next due to meet with representatives from Rio Tinto at 2pm on 18 November 2020 and will be expected to provide an indication of whether the Crown are willing to pursue an agreement and the quantum of any Crown support.
- b. **Note** that any agreement is likely to be of limited value to the Crown, considering the low likelihood of additional remediation benefits being included and the high likelihood that NZAS may accept the Meridian Energy Ltd (MEL) offer, without the need for additional Crown support.
- c. **Note** that there is a limited risk that the smelter may choose to forgo the significant profitability afforded by the MEL offer, and in the absence of a Crown agreement, follow through with its stated intentions to close. Rio Tinto's strongest negotiation tactic is to threaten to cease operations and exit.
- d. **Indicate** whether you wish to provide additional Crown support for NZAS to delay closure.

Yes / No

Hon Grant Robertson
Minister of Finance

Yes / No

Hon Dr Megan Woods
Minister of Energy and Resources

Yes / No

Hon David Parker
Minister for the Environment

- e. **Note** that there are a number of different options that officials may seek to target in any agreement.
- f. **Indicate** which of these three options you would like as a starting point for negotiations:

	Hon Grant Robertson Minister of Finance	Hon Dr Megan Woods Minister of Energy and Resources	Hon David Parker Minister for the Environment
<u>Option A</u> : Low cost option with high deal certainty securing existing remediation standards (Recommended)	Agree / Disagree	Agree / Disagree	Agree / Disagree
<u>Option B</u> : Medium cost option with additional financial surety that NZAS will meet their existing remediation obligations	Agree / Disagree	Agree / Disagree	Agree / Disagree

<u>Option C</u> : High cost option targeting higher environmental outcomes.	Agree / Disagree	Agree / Disagree	Agree / Disagree
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- g. **Note** that if you choose option A, options B and C remain available to you as future negotiating positions.
- h. **Note** that if you choose option B or C, officials will provide further advice.
- i. **Agree** that officials will begin with an initial offer of Crown support of \$5 million per annum for three years for an agreement in line with Option A.

Agree / Disagree

Agree / Disagree

Agree / Disagree

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
Minister of Energy and ResourcesHon David Parker
Minister for the Environment

- j. **Agree** for any Crown support to be delivered by EITHER:

Option 1: a direct Crown payment to NZAS (**Recommended**).

OR

Option 2: split invoicing, using section 7 of the State Owned Enterprises Act.

Agree / Disagree Option 1

Agree / Disagree Option 1

Agree / Disagree Option 1

Agree / Disagree Option 2

Agree / Disagree Option 2

Agree / Disagree Option 2

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
Minister of Energy and ResourcesHon David Parker
Minister for the Environment

- k. **Note** that this report provides updates on additional information that was requested by you, the Minister of Energy and Resources, and the Minister for the Environment (the Tiwai Group Ministers) during your meeting with officials on 3 November 2020, including on the legal options available to the Crown in relation to the personal liability of directors of NZAS.
- l. **Note** that the Treasury are setting up a range of options to involve Ngāi Tahu in the negotiation process.
- m. **Agree** that the Treasury should provide a mechanism for Ngāi Tahu to provide their views directly to Ministers, for example through a 'Ngāi Tahu' comment section in Treasury advice.

Agree / Disagree

Agree / Disagree

Agree / Disagree

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
Minister of Energy and ResourcesHon David Parker
Minister for the Environment

- n. **Agree** to meet officials on the morning of 18 November 2020 to discuss this report, the options available, and the corresponding level of potential financial Crown support.

Agree / Disagree

Agree / Disagree

Agree / Disagree

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Hon David Parker
**Minister for the
Environment**

Jean Le Roux
Manager, Transitions, Regions, and Economic Development

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

Treasury Report: Project 14: Tiwai Aluminium Smelter Negotiating Approach Purpose

1. This report seeks your agreement the negotiating approach to be taken in engagements with Rio Tinto regarding the delayed closure of the New Zealand Aluminium Smelter (NZAS).
2. This report also provides updates on additional background information requested by you, the Minister of Energy and Resources, and the Minister for the Environment (the Tiwai Group Ministers) during your meeting with officials on 3 November 2020.

Context

3. On 12 November 2020, you lodged the 'Tiwai Aluminium Smelter Negotiating Mandate' Cabinet Paper for consideration by Cabinet on 16 November 2020. The paper updates Cabinet on engagements with Rio Tinto to date and seeks 'Power to Act' for designated Ministers. The negotiating approach set out in this paper will be revised based on any relevant feedback from Cabinet and the Tiwai Group Ministers.
4. Officials met with representatives from Rio Tinto on 4 November 2020. During this meeting, officials informed Rio Tinto that the Tiwai Group Ministers expect additional commitments on site remediation to be included in any agreement. In response, Rio Tinto indicated they are not prepared to consider any further commitments on site remediation, without first understanding the level of Crown financial support to be offered to NZAS. Rio Tinto also declined to attend the regularly scheduled negotiating meeting on 11 November 2020.
5. Officials are next due to meet with representatives from Rio Tinto at 2:00pm on 18 November 2020 and Rio Tinto will expect an update from officials on the potential quantum of Crown support.

Overview of progress so far

The Crown is taking a holistic approach in its engagements with Rio Tinto, while Rio Tinto is primarily interested in achieving an economic outcome and avoiding negative reputational impacts

6. In line with the approach agreed by Tiwai Group Ministers and Rio Tinto on 11 September 2020 discussions between the Crown and Rio Tinto have been focused on a holistic approach which comprises:
 - Environmental site remediation
 - Workforce retention and utilisation
 - An economic outcome for NZAS. To date, discussion around this outcome has been focused on transmission pricing relief.
 - Agreement structure (support mechanism, level and duration of operations)

7. The purpose of the holistic approach is to ensure that any agreement with Rio Tinto achieves the best possible outcomes for the Crown across the range of its interests.
8. Rio Tinto are primarily concerned with the total economic effect of any Crown support. Rio Tinto also want to ensure a reputational outcome, namely being seen to negotiate a degree of Government backing for their ongoing operation, but without that backing being presented as a 'subsidy'. This reputational outcome is relevant to Rio Tinto given they own a portfolio of metals and mining assets, and are likely to see their engagement with the Crown as having precedent effect for future negotiations in other jurisdictions. Given this, Rio Tinto has indicated a preference that any Crown support is provided via Transpower in the form of reduced transmission prices.

There is in principle agreement between the Crown and Rio Tinto on workforce retention levels, but significant differences between the parties on the level of Crown support and environmental site remediation

9. As discussions have progressed with Rio Tinto, the Crown has come to understand that NZAS will continue to operate at near full capacity for the duration of any extension, and therefore will continue to retain the vast majority of personnel.
10. Rio Tinto has indicated they are unwilling to make substantive environmental site remediation commitments until they have more visibility of the financial support being proposed by the Crown. Instead Rio Tinto has exclusively provided process commitments, such as a Closure Study.

Next steps and options for the negotiation

Meridian Energy Limited (MEL) have offered a substantial discount on its electricity agreement with NZAS if the smelter continues operations until August 2024. Our commercial advice suggests that NZAS are unlikely to close, even if additional Crown support is not provided.

11. s9(2)(ba)(i) 
12. s9(2)(ba)(i)  although MEL are strongly incentivised to encourage the Crown to provide support in order to secure a deal.
13. Commercial advice suggests that Tiwai currently ranks fifth among Rio Tinto's thirteen smelters in terms of its cash margins. The new MEL contract would potentially improve Tiwai's position to third in Rio's portfolio on this metric. The underlying profitability of the smelter is

also likely to be significantly improved by the new MEL contract with average EBITDA¹ potentially tripling. This enhancement to Tiwai's profitability and competitiveness is sufficiently significant to suggest that NZAS are unlikely to close in August 2021, even if additional Crown support is not provided.

14. This may mean that the benefits of concluding an additional Crown agreement are very limited as the Government's goals around employment retention and regional economic development will be achieved without a direct Government deal.
15. However, there remains a limited risk that the smelter may choose to forgo the significant profitability afforded by the MEL offer, and in the absence of a Crown agreement, follow through with its stated intentions to close. Rio Tinto's strongest negotiation tactic is to threaten to cease operations and exit.

Any deal is likely to be incremental with limited additional remediation benefits.

16. The view of the Crown negotiating team is that the likelihood of significant environmental enhancement being agreed is small. Rio Tinto has expressed an unwillingness to include any specified remediation activity in the heads of agreement or to formally codify its environmental obligations on the site. It is possible that this position only reflects Rio Tinto's initial negotiating stance and that it may be prepared to make environmental concessions as the negotiation progresses, but there is no evidence of this to date. Engagement with MEL has indicated that Rio Tinto rarely, if ever, offer anything in return in negotiations.
17. A risk for the Government in the negotiations, particularly if it was to commit to significant payments, is the risk of paying for something that NZAS was legally obliged to do or going to do anyway. There are also risks around paying NZAS to deliver an environmental activity we want rather than the alternative option of directly controlling the delivery of that activity.
18. Our overall preferred approach, therefore, recognises that this deal is incremental and unlikely to be determinative around closure. The Government needs to be ready to walk away from negotiations if there is doubt that genuine net benefits for the Crown are delivered.

Ministers need to decide whether to offer any substantial Crown support.

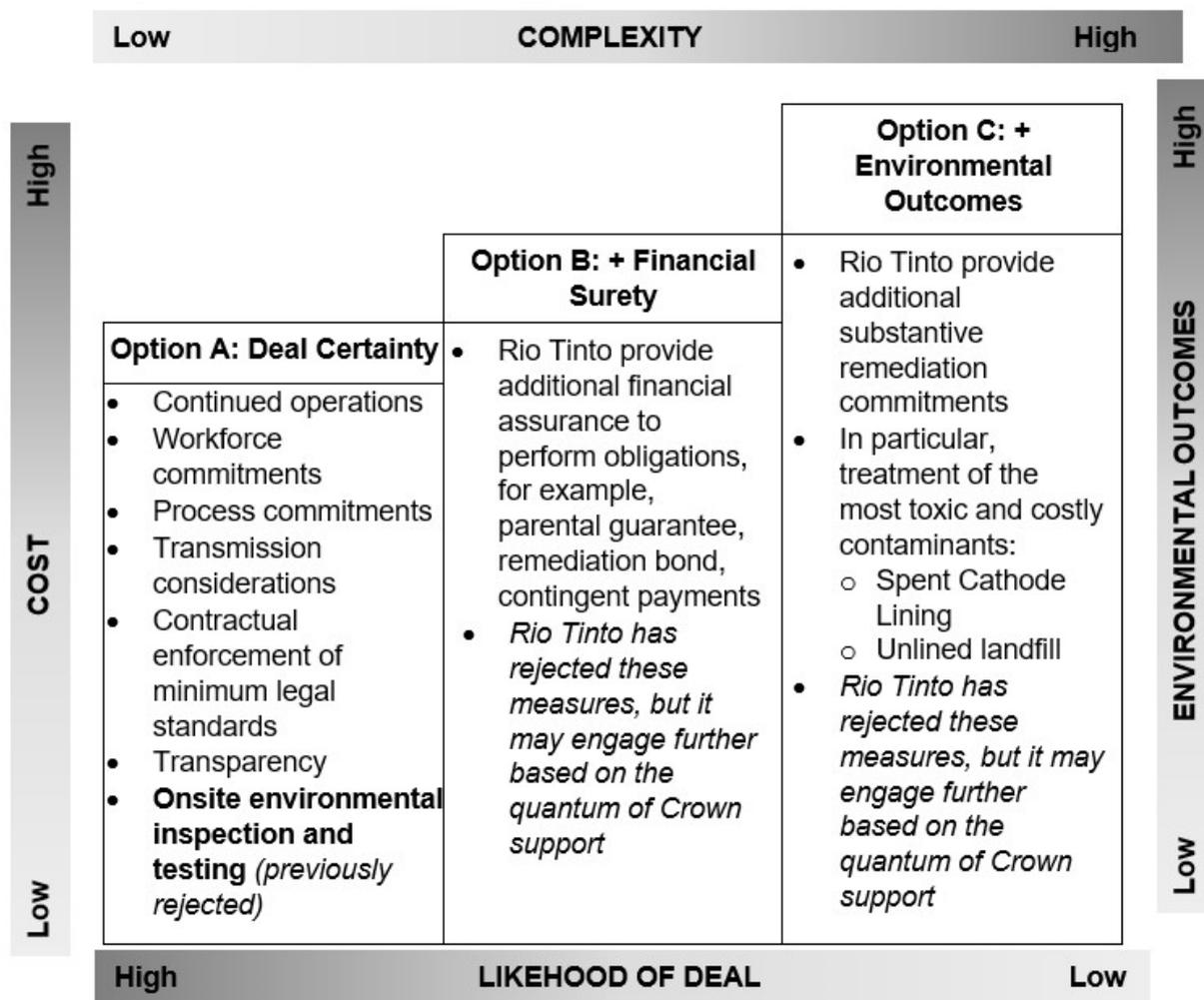
19. In the view of officials, a no-deal may prove to be the best outcome. There is a key question for Ministers about whether to continue the negotiations. The benefits of a Government deal would be limited to increased certainty of delayed closure if Ministers wished to reduce any remaining risk. There may also be some minimal value from any environmental remediation enhancements that are secured, although these are likely to be low.

If Ministers want to provide Crown support, there are a range of options to do so

20. Figure 1 below depicts representative options that incorporate increasing levels of certainty of remediation delivery and/or inclusion of defined remediation activity. Cost and complexity increase as remediation commitments become more substantial while likelihood of concluding an agreement declines.

¹ EBITDA is net income (or earnings) with interest, taxes, depreciation, and amortization added back. EBITDA is a common measure used to compare profitability among companies and industries, as it eliminates the effects of financing and capital expenditures.

Figure 1: Potential options for agreement



21. Features to note with respect to each of the options is as follows:

Option A: Deal Certainty

- This option is likely to be readily achievable. We do not consider that it contains features that Rio Tinto would be opposed to in principle. It simply becomes a matter of price.
- The remediation enhancements under this option compared to the status quo are:
 - the addition of a contractual basis for enforcement of the delivery of existing legal environmental obligations
 - a contractual right for independent on-site inspections over and above existing RMA rights, and
 - a commitment to a closure process that incorporates community and government involvement in remediation outcomes for re-use and repurposing the site.

Option B: Option A + Financial Surety

- The main incremental benefits over option A are the inclusion of financial measures, such as a parental guarantee or environmental bonds that provide additional surety. NZAS will be in a financial position to fulfil any environmental obligations that it has. Without these measures there would be some risk that NZAS could avoid its obligations through liquidation or insolvency.
- We are unclear on the probability of these features being acceptable to Rio Tinto. As yet, Rio Tinto has not moved its negotiating stance on remediation but this could be because it wanted to see a financial offer from the Crown first.
- There are some reasons to believe that a certain level of remediation enhancement can be achieved in the document over and above option A. There are reputational implications for Rio Tinto surrounding remediation, and there is a provision in NZAS' accounts for remediation, ^{s9(2)(ba)(i)} [REDACTED]. Each of these features indicate that Rio Tinto's baseline activity on remediation is not zero meaning that some aspects can be included in the agreement at minimal cost to Rio Tinto.

Option C: Option B + Environmental Outcomes

- The probability of achieving this option is likely to be very low or very costly. The specific remediation activities identified are expensive (for example, estimates from our environmental consultant suggest removal of spent cathode lining alone will cost approximately \$350 million) and Rio's stance is that they will not know the appropriate action for each source of contamination until the full closure plan is completed, in late 2021 at the earliest.
 - It also may be undesirable for the Crown to negotiate option C if any remediation benefits included are fully priced into the cost of the agreement meaning that there are no net benefits.
22. Each of the options represent an endpoint that you could target. It is at least as important, however, to plan the way we try to get to one of those endpoints. There is an asymmetry of information between the Crown and Rio Tinto. If we were to immediately propose option B or C, including a proposed payment level associated with each respective option, we would run a significant risk of overpaying for any movement in Rio Tinto's stance.

Advice on initial offer and which option to target**Officials recommend using option A as a starting point and offering only \$5 million per annum for three years for a deal with those characteristics.**

23. Officials propose that we use option A as a starting point as it represents close to what is on the table now. The Government would indicate that it places limited value on that option so is prepared to offer only \$5 million per annum for three years for a deal with those characteristics. Rio Tinto will consider that a very small offer given the view it has provided to the Crown regarding transmission pricing ^{s9(2)(ba)(i)} [REDACTED]. We would

² A business can obtain a refund from this balance if they either (i) incur restoration or monitoring expenditure, or (ii) there is a decrease in their anticipated liability for restoration (as shown by their audited financial statements).

note that we would be prepared to discuss increased funding if more meaningful remediation benefits were included. The intention is to start to get some movement from Rio Tinto and create some momentum within the negotiations.

24. Our intention would be to take an iterative approach to the negotiations and maintain flexibility to respond based on what Rio Tinto offers. If Rio Tinto showed a willingness to include some of the additional remediation enhancements we would propose to Ministers an increased financial offer based on what enhancement was being offered.
25. It would be open to the Government could then to present the financial component of any deal as providing a transmission pricing outcome to NZAS. For example, a payment of \$10 million per annum would closely match the estimated reduction in transmission charges for NZAS under the new Transmission Pricing Methodology (TPM). This approach nonetheless presents the risk of setting a precedent for other electricity users that consider they have been overpaying for transmission. ^{s9(2)(ba)(i)}
s9(2)(ba)(i)

Mechanisms for delivering financial Crown relief

26. At your meeting with officials on 3 November 2020, the Tiwai Group Ministers expressed a preference that any support provided to NZAS be delivered through a contract under section 7 of the State Owned Enterprises Act 1986 (the SOE Act).
27. ^{s9(2)(h)}
[REDACTED]
28. ^{s9(2)(ba)(i)}
[REDACTED]
29. The Treasury does not consider a split invoicing arrangement under section 7 to be the best way to deliver an economic outcome to NZAS, as this does not represent the holistic approach and plays to Rio Tinto's strategy to make any deal based on transmission pricing. We consider the best approach is a direct payment between the Crown and NZAS. We think that the use of a section 7 contract is unlikely to reduce the risk that the payment is perceived as a subsidy. This is because the economic substance of the two arrangements is the same: both will require a direct and transparent payment by the Crown, with NZAS the beneficiary of that payment.
30. While the economic outcome is the same, the use of a split invoicing arrangement has three disadvantages relative to a direct payment to NZAS:

³ It is not legally permissible for the Crown to contract with Transpower to provide transmission to NZAS at a reduced price. If the Crown was to contract with Transpower to pay a rebate to NZAS, this would not fall within the scope of section 7. This option is therefore not legally viable.

- a. *Timing and execution risk:* a split invoicing arrangement under section 7 adds Transpower as a counterparty and will require the creation of three sets of interdependent contracts.⁴ This adds material complexity, increasing the risk to the timetable for a deal.
 - b. *Impact on enforcement:* under a section 7 contract, the Crown would be required to make Transpower whole (i.e. continue to pay), even in circumstances where NZAS was not performing its contractual obligations. This would also prevent the Crown making its payments contingent on contractual obligations.
 - c. *Narrative and precedent effects:* part paying some of NZAS' transmission charges weakens the Crown's narrative that it is agreeing a holistic deal that includes workforce and remediation considerations. Such an approach also tacitly acknowledges that NZAS has been overpaying for transmission. As noted earlier in this report, this is likely to set a precedent for other electricity users.
31. While NZAS has to-date sought Crown support via Transpower, we consider they would likely be willing to accept a direct payment if it delivered a reputational outcome (namely that any deal was publicly explained in a way that they considered to be positive).

Tenure of agreement

Any Government deal should run from 1 September 2021 to 31 August 2024 to match the terms of the proposed MEL deal.

32. Our basic assumption is that the tenure of any Government deal on price relief would match the tenure of the proposed Meridian deal. This means that it would commence on 1/9/21 and end on 31/8/24. There are choices, however, regarding both the start and end dates.
33. With respect to the start date, Rio Tinto has proposed 1/4/20 as this is the start of the transmission charging year. We propose that the Government refuse to provide any retrospective price relief. One variation that could be considered, however, would be price relief commencing from the date of execution of the Government deal. While this would lengthen the tenure of the deal, and could increase costs depending on whether you adjust the aggregate amount or not, it could have the advantage of encouraging a prompt conclusion to negotiations and executing the final legal documentation. It would also demonstrate some willingness to compromise with Rio.
34. For the end date, Rio Tinto has proposed that transmission price relief should continue for two years beyond the end of smelting operations. The reason for this is that transmission charges are based on an entity's previous year's consumption level. So, NZAS will still receive transmission charges of around \$50m for some time after it has reduced its electricity consumption almost to zero. We understand that NZAS can avoid this situation by disconnecting the smelter site from the transmission grid once smelting operations have concluded. In our view this is a more efficient approach than the Crown potentially incurring significant costs after the smelter has discontinued operations. ^{s9(2)(ba)(i)}

⁴ These are: (i) a section contract between the Crown and Transpower agreeing how transmission costs are to be invoiced and paid, (ii) a contract between the Crown and NZAS that would obligate the Crown to pay part of NZAS's transmission charges. This contract could also include additional Crown obligations imposed on NZAS, such as process or remediation commitments, and (iii) a variation of the transmission agreement between Transpower and NZAS to reflect the invoicing arrangements.

s9(2)(ba)(i)

There are no appropriate mechanisms for forcing NZAS to exit following the end of any agreement, but there will be greater future options for the Crown and Meridian following the completion of transmission capacity upgrades.

35. We understand that a key concern for Ministers is avoiding a situation where NZAS seeks further concessions from the Crown or MEL to continue operations into the future, following the conclusion of any agreement. This scenario would be undesirable as it would lead to increased ongoing uncertainty for the electricity sector and Southland's economy, which could prevent effective transition planning.
36. The Minister of Finance and the Minister of Energy and Resources met with representatives from MEL on 10 November 2020. s9(2)(ba)(i)
37. s9(2)(ba)(i)
- However, these commercial decisions would be made in the future, which means that there is still a possibility of NZAS operating beyond 2024, should it prove able to secure an electricity contract on sufficiently attractive terms.
38. New transmission capacity, scheduled for completion by 2022/23, will alleviate constraints and allow for the northwards transportation of much of Manapouri's electricity output. This will provide MEL with a wider range of options for using Manapouri's electricity output. As such, Rio Tinto will be in a significantly weaker position in the future for trying to negotiate discounts on their electricity arrangement with MEL. This increases the likelihood that NZAS would exit at the conclusion of any agreement for delayed closure.

Communications implications

There are risks that NZAS or Rio Tinto may make public statements or approach stakeholders directly prior to the conclusion of a deal as part of their negotiation strategy.

39. To date, the Southland local community have been the focus of considerable engagement by Rio Tinto including from the Chief Executive of their Aluminium branch Alf Barrios. Some stakeholders appear to have been informed by a Rio Tinto narrative, with many being unaware of the scope of the environmental issues to be addressed at the Tiwai site.
40. Over the past weeks Rio Tinto have also directly contacted Ministers, the Secretary to the Treasury and senior Government officials to apply pressure and create a sense of urgency. This includes letters from Alf Barrios to Ministers Robertson and Woods on 6 November 2020, stating Rio Tinto's perspective that 'negotiations are at a standstill and urgently need to be reenergized', as well as a letter to the Prime Minister. We assess this to be a negotiating tactic, as the constraints on timelines have been known and well communicated since the outset of engagement with Rio Tinto.

41. No proactive Government announcements are planned until negotiations conclude. If agreement is reached, consideration could be given to a proactive announcement, perhaps including Ngai Tahu as Treaty partners and the community as key stakeholders.
42. Should negotiations conclude without reaching agreement, it may be useful to prepare for a proactive stance in communicating the reasons why this has occurred, and to address arising concerns for the community, especially around workforce and remediation.
43. Officials have drafted reactive statements which could be quickly finalised should Rio Tinto make any public statements that require a Crown response. Officials can work with Ministers' offices as required for any proactive announcements.

Additional information requested by Tiwai Group Ministers

44. During their meeting with officials on 3 November 2020, the Tiwai Group Ministers requested additional supporting information on a range of other issues. These requests are set out below, along with the response from officials.

The existing legal obligations for NZAS in relation to remediation

45. MinterEllisonRuddWatts have produced legal advice on the site remediation obligations of NZAS and any relevant enforcement mechanisms. A summary of this advice is provided in Annex 2.

NZAS' director obligations and Sumitomo's involvement in the Crown's negotiation strategy

46. Officials are giving consideration to how the legal obligations of NZAS' directors could be leveraged to enhance the Crown's negotiating position and desired outcomes. The key directors' duties are:
 - a. The duty not to incur obligations unless the directors believe on reasonable grounds that the company will be able to perform, and
 - b. The duty not to allow the company to trade in a manner that creates substantial risk of serious loss to the company's creditors (reckless trading).
47. These duties are owed to NZAS's shareholders, and in the case of insolvency or financial distress, to the company's creditors. Breach of directors' duties can lead to directors being held personally liable for a company's debts.
48. If NZAS were to go through an insolvent liquidation process (eg, because NZAS's assets fell short of its remediation obligations), the liquidators could disclaim NZAS's onerous property (e.g. contaminated land). Land disclaimed in this way would ultimately vest in the Crown.
49. In addition to continued negotiations with Rio Tinto, officials are seeking a meeting with Sumitomo to convey the Crown's expectations that the NZAS owners fulfil their legal and social obligations to remediate the site.

50. After Crown engagement with Sumitomo, officials are giving consideration to sending a letter to NZAS' directors, which include Rio Tinto and Sumitomo representatives. The benefit of this letter would be to affirm the Crown's expectations that NZAS's directors, auditors and shareholders understand their legal duties and obligations in relation to closure and remediation and will have appropriate measures in place to meet them in full.
51. The primary risk associated with this approach is reputational. Such a letter could potentially be portrayed as an implicit threat from the Crown, reflecting heightened sovereign risk for businesses with overseas owners. This risk can be mitigated in part by the context in which any letter was delivered. For this reason, the negotiating team propose to further consider this option following the initial engagement with Sumitomo.

Precedents across Rio Tinto's global business regarding environmental outcomes or issues and employment relations.

52. A summary of environmental and employment relation issues relating to Rio Tinto is attached in Annex 3. A review of other significant smelter closures is also included in Annex 4, which provides some common themes. However, little information is available regarding closure costs, contaminant concentrations present in site soils or groundwater prior to remediation, or remedial target levels.

Information sharing with Ngāi Tahu and future involvement in the negotiation process

53. Officials have been working to establish an open and transparent relationship with Ngāi Tahu, in line with the Crown's obligations as a Treaty partner. Maintaining this relationship will be important, both for managing risk and working towards the best outcome in negotiations.
54. Our approach is informed by Te Arawhiti's *Guidelines on Engagement with Māori*, as well as our early engagement with Ngāi Tahu. In these engagements, Ngāi Tahu have expressed an interest in the negotiation process particularly around workforce, tenure and remediation of the site. They have indicated that they:
- see their interests as broadly aligned with the Crown
 - would like to work in partnership on the negotiations, and be in a position to contribute where required. Ngāi Tahu have established an internal project team to support this work, and
 - would like to be able to hold engage at a decision-making (i.e. Ministerial) level where required.
55. As we engage further with Ngāi Tahu, officials propose to:
- share information gathered during our due diligence process. This information would include advice from our external advisers (for example, in relation to the social, environmental and economic impact of the closure).
 - consider a potential contribution to Ngāi Tahu's costs that would enable them to support their project team.
56. We propose to hold regular calls with the Ngāi Tahu team to discuss progress on the negotiations, and are also planning another in-person meeting in late November (building on a first meeting in October).

57. Subject to your comfort, we also propose to provide a mechanism for Ngāi Tahu to provide their views directly to Ministers, for example through a 'Ngāi Tahu comment' section within Treasury advice.
58. We note that Ngāi Tahu may contact Ministers directly on issues (as they have already done). Where applicable, the Treasury team will assist in facilitating or supporting these engagements.
59. In the medium to longer term the Ministry for the Environment and Ministry for Business, Innovation and Employment will be leading the ongoing Just Transitions and Regeneration work relating to the region. The Crown will have an on-going role to play in engaging with Ngāi Tahu as that work progresses.

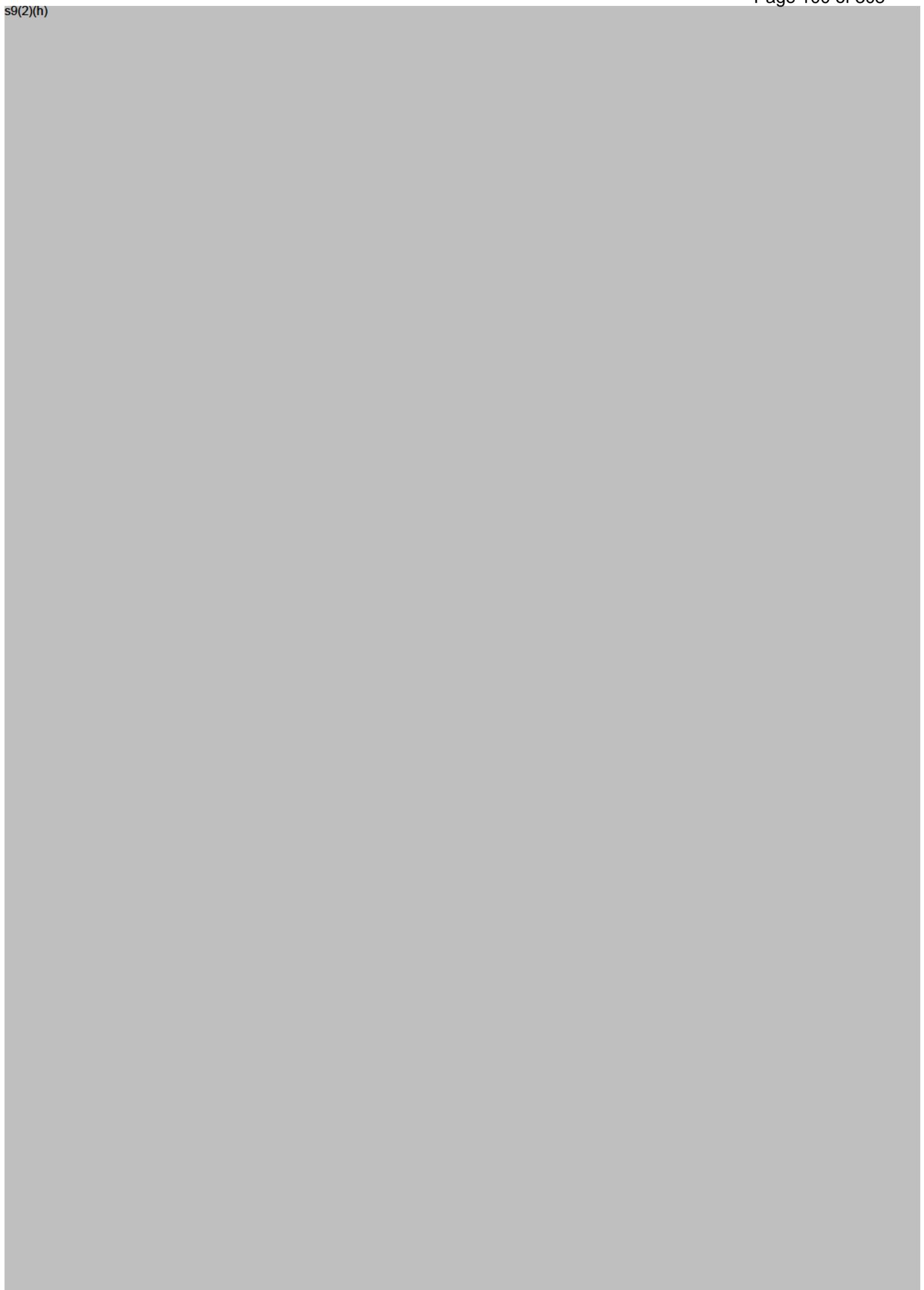
Next Steps

60. Given the substantial amount of material and key decisions set out in this report, officials see benefit in meeting with the Tiwai Group Ministers to discuss your feedback ahead of our next planned meeting with representatives from Rio Tinto on 18 November 2020.
61. Officials recommend that this meeting could occur on Tuesday 17 November 2020. This timing would also enable Tiwai Group Ministers to provide feedback following Cabinet's consideration of the 'Tiwai Aluminium Smelter Negotiating Mandate' Cabinet Paper on Monday 16 November 2020 before the Crown negotiating team meets with Rio Tinto at 2:00pm on 18 November 2020.
62. Please indicate whether you wish to meet officials to discuss this report.

s9(2)(h)



s9(2)(h)



s9(2)(h)



s9(2)(h)



s9(2)(h)



Annex 3: Rio Tinto Environmental Issues / Employment relations

Location	Mine - Issue	Date	Description
Bougainville, Papua New Guinea	Panguna mine – Social and environmental damage	Sept-2020	In September 2020, more than 150 people living in Bougainville filed a complaint with the Australian authorities arguing that waste from the copper and gold mine is causing health problems for 12,000 people living nearby. The Panguna mine was one of the region's biggest for copper and gold in the 1970s and 1980s, but widespread anger among local communities over environmental damage and distribution of profits forced its closure in 1989. Bougainvillians had previously claimed to a US court, in 2000, that the company conspired with the government to suppress civil resistance, and that subsequent actions triggered the civil war. The company previously rejected any responsibility, but now said it was willing to meet with stakeholders and discuss the issues.
Gobi Desert, Mongolia	Oyu Tolgoi copper and gold mine - environmental breaches and human rights concerns	2011 - 2020	Native Mongolian herders accused Rio Tinto in 2013 of threatening fresh water supply and the environmental stability of the country. The extreme dust generated from poorly planned dirt roads built for mining operations is compromising the health of local people, as well as their herds of animals. The company's approach to the traditional herders was to deny that they are indigenous communities, as that would mean they have internationally recognized rights to free, prior informed consent. The same year, the company laid off about 2,000 workers amid negotiations with the government on how to share revenue from the mine. In October 2020, a new class action in the US accused Rio Tinto of making materially false and misleading statements about cost and schedule blowouts on the project's expansion approved in 2015.
Pilbara, Australia	Destruction of sacred Aboriginal sites	May-2020	The company blew up the Juukan Gorge rock shelters despite the opposition of Aboriginal traditional owners. The caves - seen as one of Australia's most significant archaeological research sites - had shown evidence of continuous human habitation dating back 46,000 years. Rio Tinto chief executive Jean-Sebastien Jacques will exit the company along with two of the senior executives held partially responsible for the destruction of prized indigenous heritage.
West Papua, Indonesia	Grasberg mine - dumping of waste into rivers.	1995 - 2018	A Freeport McMoRan and Rio Tinto joint venture has been accused of causing environmental destruction due to the dumping of up to 3.5b metric tons of waste, including toxic metals, into Indonesia's river system.

			Indonesia's National Commission on Human Rights noted that in the mid-1990s the Indonesian security forces indulged in indiscriminate killings, torture and disappearances of local people in their safeguarding of mine operations and their campaigns against West Papuan secessionists. In 2008, Norway included Rio Tinto into its environmental exclusion list due to Grasberg. Rio Tinto sold its stake in 2018 for USD\$3.5b.
Quebec, Canada	Alma Smelter – Labour dispute	2012	The company locked out about 800 workers of its smelter in Quebec, after talks about contracts collapsed without agreement with the union.
Wisconsin, USA	Flambeau Mine - contamination of local water	2012	A federal judge said that the mine violated the Clean Water Act. The judge argued that the mine leaked toxic levels of copper into a local stream, even after 15 years of its closure and clean-up in 1997. The judge considered the fault not serious in nature and issued a pro forma penalty to the Rio Tinto subsidiary for USD\$275.
California, US	Borax mine – contract dispute	2010	In January 2010, Rio Tinto locked out 570 union workers from its mine in the Mojave Desert. The decision came after five months of unsuccessful contract negotiations. The workers, represented by the International Longshore and Warehouse Union Local 30, rejected a contract proposal they said would scrap their seniority system and allow the company to hire more non-union employees.
Borneo, Indonesia	Kelian gold mine - dumping of waste into rivers, displacement of indigenous communities.	1992 - 2005	During the construction of the mine in the 1980s, over 440 indigenous Dayak villagers were forcefully evicted from their lands. The Indonesian Commission on Human Rights has stated that in the 1990s arrests and detentions of people protesting against the mine took place on a number of occasions, and that some Kelian staff had raped members of the local community. During its operation, it is estimated the mine dumped 100m tonnes of waste rock into the environment. At the moment of the closure, Rio Tinto estimated the clean-up process to require five years and at least USD\$120m.
Swakopmund, Namibia	Rössing uranium mine - Sick workers and waste production	1970-2019	Miners who dug ore were reported to be dying of cancers and unexplained illnesses after working in the mine. Although, the mine improved its safety standards, it operated rudimentarily when it opened in 1976. The mine produces 20 million tons of crushed, sulphuric-acid-soaked, slightly radioactive rock on an annual basis. In 2019, Rio Tinto sold all of its shares to the China National Uranium Corporation Limited. The Iranian Foreign Investment Company has held 15% of the mine since its opening.

s9(2)(ba)(i)



s9(2)(ba)(i)



s9(2)(ba)(i)





TE TAI ŌHANGA
THE TREASURY

Treasury Report: Project 14: Additional Option for Tiwai Aluminium Smelter Negotiating Approach

Date:	17 November 2020	Report No:	T2020/3475
		File Number:	SH-11-5-1-4-3

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Read prior to meeting with officials to discuss and direct officials on the preferred negotiating strategy	9.30am 18 November 2020
Hon Dr Megan Woods Minister of Energy and Resources		
Hon David Parker Minister for the Environment		

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Dominic Milicich	Principal Advisor, Firm Support	N/A (wk)	s9(2)(g)(ii) ✓
Jean Le Roux	Manager, Transitions Regions and Economic Development	s9(2)(k)	N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Project 14: Additional Option for Tiwai Aluminium Smelter Negotiating Approach

Purpose of Report

1. Officials are meeting with you at 9.30am on Wednesday 18 November 2020, via Zoom, to discuss the negotiating approach for Project 14. This report asks Ministers to:
 - a. confirm the minimum remediation requirement that a Government deal must meet or exceed to be acceptable; and
 - b. endorse the proposed negotiating strategy based on that minimum requirement.

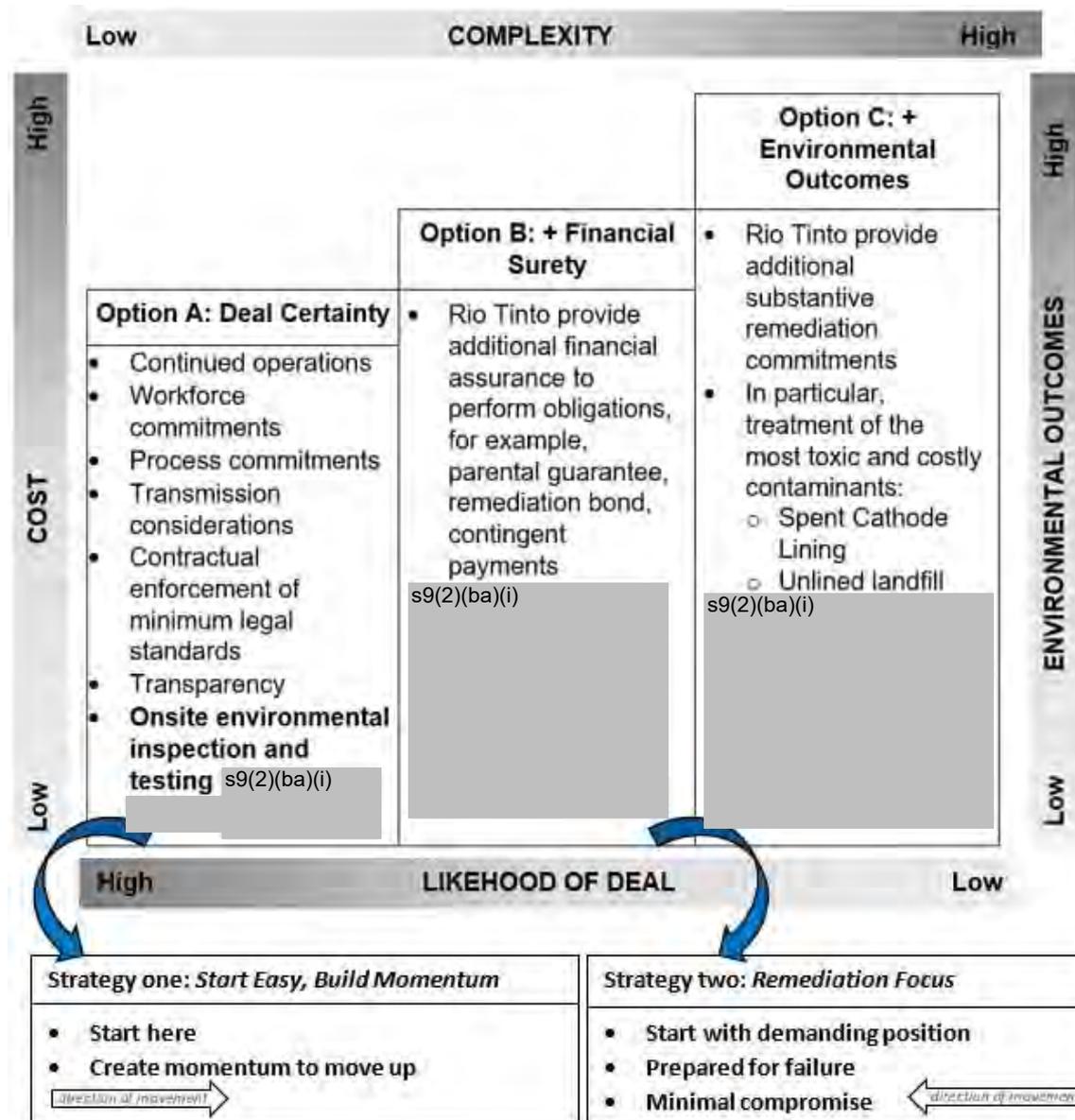
Background

2. We reported to you on 13 November 2020 on a proposed approach to the negotiation for a delayed closure of Tiwai [T2020/3442 refers and is attached]. Officials discussed that report with you at pre-Cabinet on 16 November 2020. You also took a paper to Cabinet on 16 November 2020 informing your colleagues of the approach to negotiations that you intended to take.
3. The Cabinet paper¹ included an indicative remediation goal for a deal which stated:

The deal must include commitments to specific actions to remediate individual sources of contamination or mechanisms to increase certainty that Rio Tinto will carry out site remediation (e.g. funds set aside for remediation in a manner that provides sufficient certainty that those funds will be used for the specified purpose, parental guarantee).
4. The Treasury report included a stylised depiction of negotiating options replicated below as Figure one (with the inclusion of the two strategies discussed in this paper). The remediation goal from the Cabinet paper would be consistent with some form of Option B or above.
5. Officials indicated that not concluding a Government agreement (that is, 'no Crown deal') could be a satisfactory outcome as there is a strong argument that the Meridian Energy Limited (MEL) offer is sufficiently attractive to entice Tiwai to continue operations irrespective of Government involvement.
6. If a Government agreement was to be progressed, officials recommended commencing an iterative negotiation process by stating to Rio Tinto that Option A as currently on the table would only be worth a low sum for the Government such as \$5m per annum for three years (a total of \$15m). The intention was to encourage Rio Tinto to start revealing remediation related content that it would be prepared to include in a deal. Officials were not recommending Option A as a desired endpoint as the intention was to encourage the inclusion of remediation content, at least consistent with the statement in the Cabinet paper.

¹ Tiwai Aluminium Smelter Negotiating Mandate [T2020/3324]
T2020/3475 Project 14: Additional Option for Tiwai Aluminium Smelter Negotiating Approach

Figure 1: Potential options for agreement



Ministers’ Feedback

7. At pre-Cabinet on 16 November 2020 Ministers’ feedback included that a Government agreement which only required remediation based on minimum legal standards was unsatisfactory and would be potentially less preferred than no Government agreement. If this is the Government’s position, the implications are that:
 - a. Option A is unsatisfactory as it would not achieve the Government’s remediation bottom line, and
 - b. any version of Option B which only offered certainty of payment with respect to achieving minimum legally required remediation standards is similarly unsatisfactory.

8. The feedback also calls into question officials' proposed negotiating strategy as using Option A as a starting point is questionable if it is less than any deal that the Government would be prepared to conclude.

Updated Remediation Bottom Line

9. We have considered various options for specifying remediation activity in the deal that would exceed minimum legal standards. Our preferred approach for your consideration is as follows.
- a. The Government commits to providing a currently unquantified amount of funding per annum for three years as cost relief.
 - b. The payment is made in the form of a 'Remediation Bond' including the accrual of interest.
 - c. The Remediation Bond would be redeemable following the cessation of smelter operations once the smelter's owners can demonstrate that an amount at least equal to New Zealand Aluminium Smelters Limited's (NZAS') current accounting provision² for site remediation has been spent on qualifying remediation activity, for example \$300 million.
 - d. Qualifying remediation activity would be defined to ensure that qualifying expenditure genuinely delivers the environmental benefits sought. The definitions used by the Inland Revenue Department for the operation of Environmental Restoration Accounts could be a good starting point.
10. The advantages of this approach are that:
- a. it would result in an outcomes-focussed payment by the Government that is calculated by reference to a balance of transmission pricing and emission credits, but does not interfere with the regulatory transmission pricing framework
 - b. it would require a level of expenditure on relevant remediation activity
s9(2)(h)
 - c. it avoids attempting to name specific remediation actions that are required, given the level of uncertainty regarding site condition and what actions may be appropriate, s9(2)(h)
 - d. the form of assurance required by Government to make payment to NZAS under the Remediation Bond for qualifying remediation activity could be structured in a way to involve key stakeholders such as Ngāi Tahu, Environment Southland and Invercargill City Council
 - e. it links remediation activity directly to NZAS' own estimates of necessary remediation activity, limiting NZAS' ability to discard the figures as unreasonable, and
 - f. if remediation undertaken is less than the threshold level, the Government does not contribute any funding to NZAS, it is clear that the Government is not endorsing a minimal environmental response.

² \$295m as at 31 December 2019. We would enter the dollar figure in the contract to avoid being tied to a changing accounting provision over time.

11. The disadvantage of this approach is that it is a more aggressive negotiating stance and raises the probability of negotiations failing. In particular, this option would not provide any cash injection into the NZAS business. It also creates the risk of paying for a higher environmental standard that Rio Tinto was already planning to deliver (although this is capable of being mitigated in part by excluding from qualifying remediation activity done to achieve the “legal minimum” and focussing on optimal outcomes when setting the Remediation Bond redemption conditions). The Remediation Bond will be difficult, if not impossible, to implement with the involvement of Transpower (i.e., via a section 7 contract under the State Owned Enterprises Act 1986) as payment will be withheld contingent on future NZAS actions.
12. Ministers need to be certain that a deal such as one under Option A is unsatisfactory under any conditions. It also does not ensure any specific action is performed but rather that a given volume of expenditure occurs on environmental measures.
13. As this approach is more demanding of NZAS than Option A, we consider it justifiable that the Government’s initial financial offer be higher, say \$10m p.a. for three years, rather than the \$5m p.a. for three years for Option A.
14. A variant of the proposed approach could be that a portion of the Remediation Bond becomes payable as NZAS expends a certain portion of the full amount on qualifying activity. This kind of variant may be satisfactory but the level of qualifying expenditure at which any funds are released should still be a substantial portion of the accounting provision rather than any kind of linear relationship. We wish to provide an incentive to undertake substantial action, not merely provide a funding source for remediation.
15. It would also be possible to choose a different number for the remediation threshold for the release of the Remediation bond. There are advantages from linking it to NZAS’ accounting provision as noted above but our environmental consultants have provided remediation cost ranges substantially greater than the accounting provision. The difficulty with using a larger number, however, is that the estimates that we have are also highly uncertain and we consider it very unlikely that NZAS would agree. Using a slightly lower number could still have merit as it would still exceed minimum legal standards but using a much lower number obviously raises concerns that the Government was endorsing and potentially funding an inadequate environmental response.
16. If Rio Tinto find the Remediation Bond unacceptable and push for an upfront cash instalment, then as part of an iterative negotiating approach, officials could engage on a hybrid option of offering an upfront payment and a Remediation Bond.

Negotiating Strategy

17. A meeting with Rio Tinto is scheduled for 2pm on Wednesday 18 November 2020. Rio Tinto is expecting an indication of the level of pricing relief it can expect from the Government as it knows that the issue was discussed at Cabinet on 16 November 2020. Officials need to have a clear understanding of Ministers’ remediation bottom line ahead of that meeting.
18. We are meeting with you at 9.30am on Wednesday 18 November 2020 to discuss this note (agenda attached as **Annex One**). If Ministers confirm at this meeting that any deal must involve remediation in excess of the minimum legal standards, officials propose that the opening offer to Rio Tinto would be a mechanism as outlined in paragraph 9 above. If Ministers conclude that a deal could still be satisfactory if it included minimum remediation legal standards, such as Option A, officials would revert to the negotiating strategy outlined in the previous Treasury report, with a starting offer of \$5m p.a. for Option A [T2020/3442 refers].

Recommended Action

We recommend that you:

- a. **discuss** this report with officials at the scheduled Zoom call at 9.30am Wednesday 18 November 2020
- b. **note** that Joint Ministers must agree to a negotiating strategy and provide the relevant direction to officials at this meeting as the negotiating team will need to convey to Rio Tinto an indication of the level of pricing relief and nature of the arrangement it can expect on Wednesday at 2.00pm 18 November 2020
- c. **note** that the Government's commercial advisors have concluded that the MEL deal on its own is sufficiently generous to make it relatively unlikely that NZAS will close in August 2021, s9(2)(ba)(i)
- d. **agree** the strategy for negotiating a Government deal
 - i. Start Easy, Build Momentum – Option A, \$5m p.a. for three years, request inclusion of additional and specific remediation actions

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

OR

- ii. Remediation Focus - \$10m p.a. for three years, Remediation Bond, redeemable once qualifying remediation expenditure exceeds NZAS current accounting provision for remediation.

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

- e. **note** a hybrid strategy, integrating Option A by offering \$5m p.a. upfront, with an additional offer of \$10m p.a., to be executed via Remediation Bond remains a future approach open to the Crown.

s9(2)(k)

Jean Le Roux
Manager, Transitions, Regions, and Economic Development

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

ANNEX 1: Meeting Agenda

**Tiwai Group Ministers Meeting
9.30-10.00am Wednesday 18 November 2020**

Minister of Finance
 Minister of Energy and Resources
 Minister for the Environment

#	Time	Topic	Description	Lead
1	9.30-9.45	Negotiating options and strategy	Discuss options: <ul style="list-style-type: none"> • No Government agreement • Strategy one as a starting point and moving up (Option A) '<i>Start Easy, Build Momentum</i>' • Strategy two, new option in the form of a Government bond, as a starting point '<i>Remediation Focus</i>' 	Treasury
2	9.45-9.55	Preferred option	Ministerial decision for preferred strategy to be implemented in scheduled call with Rio at 2pm 18/11/20	Treasury
3	9.55-10.00	Any other business	Any additional matters / next steps	Treasury



TE TAI ŌHANGA
THE TREASURY

Reference: T2020/3495 SH-11-5-1-4-3

Date: 19 November 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: None
(if any)

Aide Memoire: Project 14: Weekly Update 19 November 2020

Purpose

This aide memoire provides a summary of your meeting with officials at 9:30am on 18 November 2020 in relation to the delayed closure of New Zealand Aluminium Smelters Limited (NZAS) and key talking points on site remediation for Ministers to use in upcoming meetings with stakeholders. It also provides an update of officials' subsequent meeting with representatives from Rio Tinto and Sumitomo at 2:00pm on 18 November 2020. The contents of this briefing are **commercial-in-confidence**.

During your meeting with officials on 18 November 2020, you agreed to officials' proposed new negotiation approach for the delayed closure of NZAS. You also endorsed the starting offer of a total payment to NZAS of ^{s9(2)(j)} [REDACTED].

Officials presented a new approach to you for negotiations with Rio Tinto. This approach consists of the Government committing to a payment to NZAS that would be accessible following NZAS demonstrating it has incurred a minimum agreed amount of expenditure on qualifying environmental remediation activity after the cessation of smelter operations. Further detail on this mechanism was provided to you on 17 November 2020 (T2020/3475 refers).

Officials also proposed a starting offer of a total Crown payment of ^{s9(2)(j)} [REDACTED]. Officials conveyed that this new approach is a more aggressive negotiating stance and raises the probability of negotiations failing. Officials noted that the negotiations will be iterative. Officials also highlighted that the "bond" will be difficult, if not impossible, to implement with the involvement of Transpower (i.e., via a section 7 contract under the State Owned Enterprises Act 1986) as payment will be withheld contingent on future NZAS actions.

Ministers noted that the Crown may need to have flexibility in its negotiation approach and how it is framed, particularly as NZAS' owners will need to be able to navigate their own internal processes in order to get a deal agreed. As part of this flexible approach, a fall-back option could be a simpler deal to provide certainty of extension for Southland, such as Option A which was presented to Ministers previously (T2020/3442

refers). Option A involves an upfront payment in return for Rio Tinto committing to achieve legal minimum remediation standards.

There was discussion on an appropriate name for the payment, with Ministers expressing the desire that any payment should not be linked to transmission price relief. Officials have subsequently considered this point and suggest that the payment could be referred to as the 'Southland Transition Bond', as this does not tie the payment to any single element of the holistic approach.

Officials advised Ministers of Rio Tinto's request that the Crown nominate a lead agency to participate in the Rio Tinto-led Closure Study processes. Ministers agreed that the Ministry of Business, Innovation and Employment (MBIE) would be best placed to lead this engagement, with the support of a cross agency team (including the Treasury and the Ministry for the Environment). We expect the Project 14 steering group to advance this approach during its next meeting on 27 November 2020.

Officials presented the Southland Transition Bond concept and opening offer of s9(2)(j) to Rio Tinto. Rio Tinto indicated that it would consider the proposal, although their initial response was tepid.

As directed by Ministers, officials conveyed the Southland Transition Bond concept to Rio Tinto during their scheduled call at 2:00pm on 18 November 2020. More specifically, officials proposed:

- A payment of s9(2)(j), plus interest from August 2021, following:
 - the cessation of smelter operations; and
 - the Crown being satisfied that an amount at least equal to NZAS' current accounting provision for site remediation¹, for example \$300m, has been spent on qualifying remediation activity at the smelter site.
- The definitions used by the Inland Revenue Department for the operation of Environmental Restoration Accounts would be the starting point for defining qualifying remediation activity (with day to day ongoing activities, e.g. monitoring, excluded).
- Once pre-conditions are met, the funds will be released to NZAS to apply as it sees fit.

In response, Rio Tinto representatives indicated that they would consider and respond to the proposal, if the offer was conveyed formally in writing. As an initial reaction to the approach, Rio Tinto representatives expressed disappointment at the proposed level of Crown support and indicated that the proposed payment mechanism was unlikely to satisfy their need for a payment to be linked to an immediate reduction in operating costs, in particular their ongoing transmission charges.

Officials re-iterated that this approach had been proposed to reflect Cabinet and Ministers' clear direction that site remediation is a bottom line. Officials also conveyed

¹ \$295m as at 31 December 2019. We would enter the dollar figure in the contract to avoid being tied to a changing accounting provision over time.

that this approach avoids the immediate need for Rio Tinto to make substantive remediation commitments before the end of the year and does not impose an uncapped liability.

During the course of discussions, Rio Tinto made several comments which could imply that they are anticipating that the smelter may continue to operate beyond the duration of any Crown agreement. ^{s9(2)(ba)(i)}

[Redacted]

Rio Tinto continues to employ a range of aggressive negotiation tactics, but officials remain confident that NZAS are likely to remain beyond August 2021, even without additional Crown support.

^{s9(2)(ba)(i)}
[Redacted]

The Crown negotiating team provided assurance that the Southland Transition Bond concept was reliable.

^{s6(a)}
[Redacted]

The Crown negotiating team assesses these comments to be an escalation of Rio Tinto's negotiating tactics.

The Treasury has received further advice from its external commercial advisors that confirm assessments of the smelter's profitability without a Crown agreement.

Previous analysis based on third party smelter modelling supported the view that the Meridian Energy Limited (MEL) offer sufficiently increased the smelter's profitability so that any Crown agreement was incremental, and not necessary to avoid the smelter's departure. Our external commercial advisors have reconfirmed that view ^{s9(2)(ba)(i)}

[Redacted]

with any Crown payment naturally enhancing MEL's commercial position. The Crown negotiating team assesses Rio Tinto's threat to exit to be a negotiating tactic designed to extract concessions from the Crown.

^{s9(2)(b)(i)}
[Redacted]

Officials assess that this implies Rio Tinto are anticipating continuing to operate the smelter beyond August 2021 and will engage in a deal with MEL.

Talking points on site remediation for Ministers' meetings with stakeholders.

Ministers also requested additional communications material to be prepared given possible escalation of external interest ahead of upcoming engagement with stakeholders. Those were provided as part of a communications pack to Ministers' offices on 18 November 2020, which includes key messages on the need for remediation, and two scenario based sets of talking points for a 'delayed Crown agreement' scenario and 'no Crown agreement' scenario. This communications pack is attached in *Annex 2*.

The Minister of Energy and Resources also requested talking points on site remediation ahead of her meeting with Ngāi Tahu on Friday 20 November 2020. *Annex 1* provides these talking points.

Officials assess now is the appropriate time for Ministers to send NZAS' directors letters regarding their duties, as Sumitomo have declined to engage with the Crown.

During your meeting with officials on 3 November 2020, you expressed interest in the options available to the Crown in relation to the personal liability of directors of NZAS. On 13 November 2020 officials provided an overview of NZAS' director obligations and Sumitomo's involvement in the Crown's negotiation strategy (T2020/3442 refers).

Officials also advised that they would seek a meeting with Sumitomo to engage with the minority shareholder in an appropriate manner, before the Crown advanced the approach towards NZAS directors. Sumitomo have now declined to meet with the Crown and have referred approaches to Rio Tinto's negotiating team. After initially joining the weekly calls with officials as an 'observer', the representative from Sumitomo is now playing a much more active role in the negotiations.

Officials assess that now is the appropriate time for you to send letters to NZAS' directors, which include Rio Tinto and Sumitomo representatives. These letters would affirm the Crown's expectations that NZAS's directors, auditors and shareholders understand their legal duties and obligations in relation to closure and remediation and will have appropriate measures in place to meet them in full.

The primary risk associated with this approach is reputational. Such a letter could potentially be portrayed as an implicit threat from the Crown, reflecting heightened sovereign risk for businesses with overseas owners. This risk is considered low, given Ministers are reminding Directors' of their existing legal obligations and can be mitigated in part by the context in which the letter is delivered. Officials will prepare draft letters for you to consider sending in the week starting 23 November 2020.

Next steps

Officials have formally submitted the Southland Transition Bond concept and s9(2)(i) offer to Rio Tinto for their consideration. We expect that they will either seek to negotiate the parameters of the concept, or reject the initial offer.

Officials will provide further advice to you when we have received Rio Tinto's response. If the quantum of relief ^{s9(2)(j)} or remediation spending threshold (\$300 million) are unacceptable to Rio Tinto, then officials could consider a higher level of support, if Ministers desired. If the entire Southland Transition Bond concept is rejected by Rio Tinto, a fall-back option could be a simpler deal to provide certainty of extension for Southland, such as Option A which was presented to Ministers previously (T2020/3442 refers). Officials' advice, strengthened by recent commercial advice, remains that the MEL offer is sufficient to prevent an exit in the absence of a Crown agreement.

Rio Tinto may threaten to walk away from the negotiations at this point or approach the media or other stakeholders to apply pressure to the Crown. In this instance, officials would work with Ministers' offices to provide an appropriate communications response.

Alistair Birchall, Acting Manager, Firm Support, ^{s9(2)(k)}

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, ^{s9(2)(k)}

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, ^{s9(2)(k)}

Gopika Gnanakumar, Senior Analyst, Agile Team, ^{s9(2)(k)}

Annex 1: Talking points for meeting with Ngāi Tahu on 20 November 2020

Context to negotiation

- Officials from the Treasury, supported by officials from the Ministry of Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE) are working intensively with Rio Tinto in an attempt to achieve a delayed closure of the Tiwai Point smelter.
- The Crown is taking a holistic approach in its engagements with Rio Tinto, while Rio Tinto is primarily interested in achieving an economic outcome based on decreased transmission costs.
- The holistic approach comprises:
 - Environmental remediation
 - Workforce retention
 - An economic outcome for NZAS. To date, discussion around this outcome has been focused on transmission pricing relief.
 - Agreement structure (support mechanism, level and duration of operations)

Environmental remediation position

- There is in principle agreement between the Crown and Rio Tinto on workforce retention levels, but significant differences between the parties on the level of Crown support and environmental site remediation.
- Environmental remediation is a key point of contention. At this stage, the view of the Crown negotiating team is that the likelihood of Rio Tinto undertaking significant environmental enhancement or any action beyond legal minimum is probably low.
- However officials are engaging with Rio Tinto to explore the potential of an outcomes-focussed payment by the Government that does not interfere with the regulatory transmission pricing framework and that requires a level of expenditure on relevant remediation activity in excess of NZAS' minimum legal requirements.

Why Crown wants remediation commitment

- As stewards of the land, environmental remediation is a bottom line for any Government deal with Rio Tinto.
- We are hopeful Rio Tinto and Sumitomo Chemical understand that in New Zealand, stewardship of our environment is a bottom line.

- If Rio Tinto and Sumitomo are committed to doing the right thing and delivering an appropriate level of remediation that New Zealanders expect and deserve, a commitment on remediation will not be an impediment to achieving a deal.
- It is critically important however that appropriate remediation commitments are in place, to ensure the site is returned to the standard New Zealand expects and Southlanders deserve.

Status of site

- The smelter at Tiwai Point has provided welcome employment and generated income for the Southland economy but there is a considerable future risk to our environment. We understand that there is an unlined landfill on site and a range of toxic and contaminated material. These environmental issues must be addressed regardless of any future use for this site.
- We understand that decades of aluminium smelting operations at Tiwai Point have created a significant volume of hazardous waste and contamination at the Tiwai Point site and after closure there's going to be a need to manage the risks to human health and the environment (regardless of the future use of the site).
- We haven't as yet been able to get our experts on-site and couldn't secure Rio Tinto's up to date (or historic) assessment of this contamination. This does mean there's a high degree of uncertainty but what we know is there's stockpiles of spent cathode lining, a landfill and both above and below ground infrastructure.
- There are a range of toxic materials (including cyanide, heavy metals and asbestos), and the low-lying nature of the site and sandy coastline present risks.

Annex 2: Communications pack for Ministers – 18 November 2020

This communications pack contains:

1. Environmental remediation key messages
2. Delayed Crown deal scenario talking points, Q&A
3. s9(2)(f)(iv)

Please note that these talking points are reactive and for adaption as required.

Environmental remediation key messages:Status of site:

- The smelter at Tiwai Point has provided welcome employment and generated income for the Southland economy but there is a considerable future risk to our environment including an unlined landfill and a range of toxic and contaminated material. These environmental issues must be addressed regardless of any future use for this site.
- Decades of aluminium smelting operations at Tiwai Point have created a significant volume of hazardous waste and contamination at the Tiwai Point site and after closure there's going to be a need to manage the risks to human health and the environment (regardless of the future use of the site).
- We haven't as yet been able to get our experts on-site and couldn't secure Rio Tinto's up to date (or historic) assessment of this contamination. This does mean there's a high degree of uncertainty but what we know is there's stockpiles of spent cathode lining, a landfill and both above and below ground infrastructure.
- There are a range of toxic materials (including cyanide, heavy metals and asbestos), and the low-lying nature of the site and sandy coastline present risks.

Why Crown wants remediation commitment:

- As stewards of the land, environmental remediation is a bottom line for any Government deal.
- We are hopeful Rio Tinto and Sumitomo Chemical understand that in New Zealand, stewardship of our environment is a bottom line.
- If Rio Tinto and Sumitomo are committed to doing the right thing and delivering an appropriate level of remediation that New Zealanders expect and deserve, a commitment on remediation will not be an impediment to achieving a deal.

- It is critically important however that appropriate remediation commitments are in place, to ensure the site is returned to the standard New Zealand expects and Southlanders deserve.

Delayed Crown deal scenario:

General talking points

- Despite a series of productive conversations, we are extremely disappointed that we have not as yet reached an agreement for a delayed closure of the Tiwai Point Aluminium Smelter.
- We had aimed to give the people of Southland certainty as quickly as possible, while ensuring any deal reached was appropriate for the workforce, the local economy and the environment.
- We have not reached the end of this work: a deal, with appropriate environmental outcomes, securing a regionally-led transition for the people of Southland, is achievable.
- We have sought, from the beginning, a fair and balanced agreement that would include commitments from Rio Tinto and minority shareholder Sumitomo Chemical around environmental remediation.
- We are very much aware of Rio Tinto's view that its transmission pricing charges should be addressed, and we believe that a mutually acceptable transition package is achievable.
- During the duration of their time in New Zealand, while Rio Tinto has provided welcome employment and generated income for the Southland economy, there is a considerable future risk to our environment including an unlined landfill and a range of toxic and contaminated material which will need to be addressed regardless of any future use for this site.
- It is critically important however that appropriate remediation commitments are in place, to ensure the site is returned to the standard New Zealand expects and Southlanders deserve.
- We are seeking assurances from NZAS owner Rio Tinto and its minority shareholder Sumitomo Chemical that serious environmental concerns related to decades of aluminium smelting operations at Tiwai Point will be addressed.
- We understand there is a significant volume of hazardous waste and contamination at the Tiwai Point site and after closure there's going to be a need to manage the risks to human health and the environment (regardless of the future use of the site).
- We hope Rio Tinto and Sumitomo Chemical understand that in New Zealand, stewardship of our environment is a bottom line.

- If Rio Tinto and Sumitomo are committed to doing the right thing and delivering an appropriate level of remediation that New Zealanders expect and deserve, a commitment on remediation will not be an impediment to achieving a deal.
- We have also been unable to access the site, or to enable environmental experts to assess what works are needed. While this leaves us with some uncertainty, what we know is there are stockpiles of spent cathode lining, a landfill and both above and below ground infrastructure.
- There are a range of toxic materials (including cyanide, heavy metals and asbestos), and the low-lying nature of the site and sandy coastline present risks.
- We must, as stewards of this whenua, do the right thing, and do it to a New Zealand standard that would be acceptable now, and in the future to our children and their children.
- Given recent events both in New Zealand and elsewhere, the Crown cannot support a delayed closure that does not address environmental concerns.

Delayed scenario – back pocket Q&A

Why didn't you reach a deal with RT? [Treasury](#)

We have sought, from the beginning, a fair and balanced agreement that would include commitments around environmental remediation. We have not yet achieved that.

Isn't this deal about extending the life of the smelter, in exchange for lower transmission costs? How does remediation fit? [MBIE](#)

The Government has sought to achieve an extended closure which would provide Rio Tinto the opportunity for a well-managed exit, providing certainty for its workers and the people of Southland. This managed exit would also enable a regionally-led transition to be in place and would allow for an appropriate remediation for the site.

As a responsible Government, we must ensure both the immediate and longer term needs of the people of Southland and the Southland environment are met: we have a responsibility as stewards of the land and when committing Crown funding to ensure any agreement is fair and balanced, providing good outcomes.

If no deal is reached then does this mean that Rio Tinto does not have to remediate the site? [All](#)

Rio Tinto will have to meet its legal obligations under any exit scenario. The holistic approach is about providing additional certainty that remediation will occur to a standard Southlanders and New Zealanders would expect.

Rio Tinto claims an agreement was made to reach a deal by the end of October. [All](#)

While we recognised Rio Tinto's wish to fast-track this work and we pursued a delayed closure as strongly as we could to give the workforce certainty and put in place an orderly transition for Southland, we have a responsibility to ensure any deal is both

fiscally and environmentally responsible. We have not yet achieved a deal, but it is achievable, with commitment from all parties.

The timing of the election and appointment of Ministers always meant any discussions were subject to Cabinet consideration in late November.

During the time prior to appointment of Ministers, the negotiating team worked hard to achieve preliminary understandings with Rio Tinto on key points including environmental remediation.

Do you have the right team to achieve a deal? [Treasury](#)

Yes, we have both a strong internal team who have supported several complex commercial transactions over a period of years, as well as external support in specific areas including legal, commercial and environmental advisers.

We have also created a cross-Government project team including senior officials from the Treasury, MBIE and MfE, and the same agencies are represented at a governance level supported by external advisers.

What happens now? [Treasury](#)

We believe a holistic and balanced agreement for an extended operation of Tiwai Point including appropriate remediation commitments and transition package is possible. Our team remains ready to work with Rio Tinto and minority shareholder Sumitomo Chemical should they choose to do so.

Why is remediation so important? [Treasury](#)

During the duration of their time in New Zealand, while Rio Tinto has provided welcome employment and generated income for the Southland economy, there is a considerable future risk to our environment including an unlined landfill and a range of toxic and contaminated material which will need to be addressed regardless of any future use for this site.

Has Ngai Tahu been a part of this/consulted? [Treasury](#)

Officials have been working with Ngai Tahu and regardless of this outcome will continue to do so both to secure an appropriate environmental outcome and to support an appropriate and regionally-led transition.

How much has been spent on this negotiation? Does this include procurement of consultants and if so, how much has this cost? [Treasury](#)

Attempting to secure an agreement for delayed closure has meant use of legal, commercial and environmental expertise. I'd have to confirm costs and can get back to you when we've got a more complete picture.

[What about a ballpark figure]

I don't want to get into an estimate – the point is that we did everything possible and will continue to work hard to secure a delayed closure, the right environmental outcomes and a smooth transition for the people of Southland.

What now for the local workforce? [MBIE](#)

The delay is undoubtedly difficult for Southland, particularly those who work at the smelter, but we need to ensure any deal supports the right outcomes for the people of Southland and the whenua, both now and in the future.

We have not given up on achieving an agreement for an extended operation: we hope Rio Tinto and Sumitomo Chemicals can understand our New Zealand position on protecting our environment.

What if this is the end of negotiations? [All](#)

The Government is committed to supporting Southland jobs both now and in the future, and has a strong interest in working in partnership with Southlanders to understand how best to mitigate any negative impacts of Rio Tinto's decision and to support a smooth, regionally-led transition for the region.

If indeed Rio Tinto chooses to confirm its closure in August 2021, the next phase of Crown support will be enacted to support a regionally-led transition. We will direct all our focus to supporting the workforce and region.

s9(2)(f)(iv)



s9(2)(f)(iv)



s9(2)(f)(iv)



s9(2)(f)(iv)



s9(2)(f)(iv)



s9(2)(f)(iv)





TE TAI ŌHANGA
THE TREASURY

Treasury Report: Project 14: Update on Tiwai Negotiations 30 November 2020

Date:	30 November 2020	Report No:	T2020/3580
		File Number:	SH-11-5-1-4-3

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to send letters to the NZAS directors. Sign the attached letters.	2 December 2020
Hon Dr Megan Woods Minister of Energy and Resources		
Hon David Parker Minister for the Environment		

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
George Wibberley	Senior Analyst, Transitions, Regions, and Economic Development	s9(2)(k)	N/A (mob) ✓
Jean Le Roux	Manager, Transitions, Regions, and Economic Development		N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury.

If Ministers agree, work with officials to send the attached letters to NZAS directors and auditors.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Project 14: Update on Tiwai Negotiations 30 November 2020

Executive Summary

- This report provides an update on negotiations with Rio Tinto regarding the delayed closure of New Zealand Aluminium Smelters Limited (NZAS).
- On Wednesday 18 November 2020, officials presented the Southland Transition Bond proposal to Rio Tinto, with an initial offer of Crown support of s9(2)(j). As previously advised (T2020/3495 refers), this approach consists of the Government committing to a payment to NZAS that would be accessible following NZAS demonstrating it has incurred a minimum agreed amount of expenditure on qualifying environmental remediation activity after the cessation of smelter operations.
- During its weekly call with officials at 2:00pm on 25 November 2020, Rio Tinto and Sumitomo representatives rejected this proposal outright on the basis that it does not satisfy their request for immediate relief on transmission pricing. However, despite this refusal, Rio Tinto indicated it would re-consider whether they could make any substantive commitments on site remediation. This goes against Rio Tinto's previously firm position that it would be unable to specify or commit to any remediation standards prior to the completion of its Closure Study. At this stage, officials are unsure to what extent this reflects a negotiating tactic or whether Rio Tinto is genuinely reconsidering its position.
- Rio Tinto has indicated a strong preference for support to be explicitly linked to offsetting its current transmission charges. Officials, while cautious of any deal that is transmission based (rather than holistic), will engage on the potential delivery mechanisms once Rio Tinto has considered whether it can make any further site remediation commitments.
- s9(2)(j), s6(a)

- We now consider the prospect of finalising a Crown agreement with Rio Tinto by its end of year deadline to be negligible. This is on the basis of the most recent call with Rio Tinto, the current state of negotiations, the distance between the parties' respective positions, and the time remaining in 2020.
- Rio Tinto's end of year deadline appears to be aspirational, rather than a fixed operational necessity. Officials assess that Rio Tinto will need to make the final decision regarding cessation of smelter operations sometime in the first calendar quarter of 2021.
- One potential explanation for Rio Tinto's current posturing is that it is engaging in a time-wasting strategy to apply maximum pressure and produce hastily agreed Crown concessions. A proactive response strategy is proposed. We suggest a public statement by Tiwai Group Ministers around 11 December 2020, to help keep key stakeholders and the Tiwai workforce informed of the Crown's ambition to conclude an agreement.

- Regardless of the negotiation's timing and outcome, officials propose that key advice related to the Tiwai smelter negotiations be proactively released given the significant public interest. This will clarify the Crown's position in the public domain. The proactive release would occur only once a deal has been agreed or there is no further prospect of a Crown agreement being concluded.
- The Crown is employing a proactive engagement strategy with Ngāi Tahu and key Southland stakeholders to ensure that the Crown's concerns in regard to the toxic material on site and the required remediation are understood. Members of the Crown negotiating team met with Ngāi Tahu and key stakeholders in Southland last week (on 26 November 2020) to outline our holistic approach to the negotiations. Officials also have regular engagement with Meridian Energy and had a discussion on 27 November 2020 §9(2)(ba)(i)

[REDACTED] Additionally, as part of our engagement strategy, we propose Tiwai Group Ministers send letters to NZAS's directors to affirm their legal duties and obligations. Letters for your consideration and signature are attached in Annex 1.

Recommended Action

We recommend that you:

- a **Note** that officials presented the Southland Transition Bond proposal to Rio Tinto, with an initial offer of Crown support of s9(2)(j) but Rio Tinto rejected this proposal outright.
- b **Note** that Rio Tinto indicated it would re-consider whether it could make any substantive commitments on site remediation and officials are awaiting Rio Tinto's response.
- c **Note** that Rio Tinto's end of year deadline appears to be aspirational and officials assess that Rio Tinto will need to make the final decision regarding cessation of smelter operations sometime in the first calendar quarter of 2021.
- d **Note** that a proactive response strategy is proposed, involving a public statement by Tiwai Group Ministers around 11 December 2020, to help keep key stakeholders and, importantly, the Tiwai workforce and associated economy, informed of the Crown's ambition to conclude an agreement.
- e **Note** that the Crown is employing a proactive engagement strategy with NZAS' directors, Ngāi Tahu and key Southland stakeholders.
- f **Agree** to sign and send the attached letters to NZAS's directors affirming their legal duties and obligations in relation to closure and remediation of the smelter.

Agree / Disagree

Agree / Disagree

Agree / Disagree

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Hon David Parker
**Minister for the
Environment**

Jean Le Roux
Manager, Transitions, Regions, and Economic Development

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Hon David Parker
**Minister for the
Environment**

Treasury Report: Project 14: Update on Tiwai Negotiations 30 November 2020

Purpose

1. This report provides an update on negotiations with Rio Tinto regarding the delayed closure of New Zealand Aluminium Smelters Limited (NZAS), and related engagements with stakeholders.
2. It also seeks your agreement to send letters to the directors of NZAS, affirming their legal obligations and signalling the Crown's heightened interest in the smelter's closure.
3. This report and its contents are provided to you on a commercial-in-confidence basis.

Update on negotiations with Rio Tinto

On Wednesday 18 November 2020, officials presented the Southland Transition Bond concept to Rio Tinto. Rio Tinto rejected this proposal on 25 November 2020.

4. As previously advised (T2020/3495 refers), officials put the Southland Transition Bond proposal to Rio Tinto on Wednesday 18 November 2020, which involves:
 - A payment of s9(2)(j) , plus interest from August 2021, from the Crown to NZAS following:
 - the cessation of smelter operations; and
 - the Crown being satisfied that an amount at least equal to NZAS' current accounting provision for site remediation¹, has been spent on qualifying remediation activity at the smelter site.
5. This proposal was conveyed verbally by officials to Rio Tinto during their call at 2:00pm on 18 November 2020, with a follow up written proposal provided via email later that day.
6. Representatives from Rio Tinto provided their email response on 25 November 2020 and elaborated further on their position during their call with officials at 2:00pm on 25 November 2020. Rio Tinto rejected the proposal and the entire concept of a bond on the basis that it does not satisfy their request for immediate relief on transmission.
7. In addition, Rio Tinto indicated it would be unwilling to pre-commit to spending the full quantum of its current accounting provision on site remediation, as the actual cost of remediation could be less than the current provision.

Rio Tinto indicated it would re-consider whether it could make any substantive commitments on site remediation, after previously refusing to do so.

8. During the negotiation process to date, officials have been looking for Rio Tinto to include specific commitments on site remediation within the draft Heads of Agreement, including terms around removing the spent cathode lining and addressing the unlined

¹ \$295m as at 31 December 2019. We would enter the dollar figure in the contract to avoid being tied to a changing accounting provision over time.

landfill. The Crown has put forward an array of substantive remediation proposals, all of which have been rejected by Rio Tinto.

9. Rio Tinto has been consistently firm in its position that it would be unable to specify or commit to any remediation standards prior to the completion of its Closure Study, as appropriate actions would only be known once that study was completed. The preliminary outputs of the Closure Study are due to be available in March 2021 at the earliest.
10. However, Rio Tinto have now indicated that they may potentially revisit this position. During their call with officials on 25 November 2020, Rio Tinto representatives committed to re-visiting whether any substantive remediation commitments could be made at this stage. In return, Rio Tinto indicated it would be seeking cash relief against transmission charges.
11. At this stage, officials are unsure to what extent this reflects a negotiating tactic or whether Rio Tinto are genuinely considering now making specific commitments on remediation, after months of stating they were unable to do so.

Rio Tinto has indicated a strong preference for any payment to be explicitly linked to offsetting its current transmission charges.

12. Officials have assessed a range of options for delivering support, including through the use of section 7 of the State Owned Enterprises Act 1986 (the SOE Act). Officials have previously advised you on this assessment (T2020/3442 refers).
13. Officials are of the view that a direct payment between the Crown and NZAS is still the best way to deliver an economic outcome to NZAS that fully represents the holistic approach, although the use of a section 7 contract is also feasible and legally permissible.
14. Officials, while cautious of any deal that is transmission based (rather than holistic), remain flexible on the potential delivery mechanism until Rio Tinto has confirmed whether it can make any further site remediation commitments. The inclusion of specific site remediation commitments in an agreement would further support the use of a direct payment, as these commitments would be easier to enforce under this simple contractual arrangement rather than a tripartite mechanism that involves Transpower.
15. While Rio Tinto has to-date sought Crown support via Transpower, we consider it would likely be willing to accept a direct payment if it delivered a reputational outcome. (namely that any deal was publicly explained in a way that they considered to be positive). Rio Tinto would likely frame any Crown support as a form of transmission relief.

16. s9(2)(ba)(i)



s6(a)



18. s6(a)

19.

20.

Timelines for negotiations

Rio Tinto's end of year deadline is assessed to be aspirational and the prospect of concluding a Crown agreement by then is negligible.

21. In light of the most recent call with Rio Tinto, the current state of negotiations, the distance between the parties' respective positions, and the time remaining in 2020 – we now consider the prospect of finalising a Crown agreement with Rio Tinto by its end of year deadline to be negligible.
22. Rio Tinto's end of year deadline appears to be aspirational, rather than a fixed operational necessity. s9(2)(ba)(i) [REDACTED]
[REDACTED]. Instead officials assess that Rio Tinto require a decision to be made sometime in the first calendar quarter of 2021.
23. While officials might never know precisely when Rio Tinto needs to make the final commercial decision regarding the cessation of smelter operations, several factors support officials' assessment of an early 2021 date:
- Upstream raw material supply and downstream NZAS customers are incorporated in Rio Tinto's vertically integrated business model.
 - Requests for key information from Rio Tinto have been ignored, and almost no information that would hasten the conclusion of a Crown deal has been forthcoming.
 - Rio Tinto have declined to engage in the remediation aspect of the Crown's holistic approach, refused to make any concessions, and have failed to negotiate on any of the proposals put forward by the Crown or submit any counter proposals.
 - Rio Tinto's negotiating team is not availing itself of all opportunities to quickly conclude a deal (for example, their preference is to *potentially* table a verbal proposal at the next meeting of the negotiating teams on 2 December 2020, rather than providing anything in writing in advance).

One potential explanation for Rio Tinto's approach is that it is engaging in a time-wasting strategy to extract maximum concessions before Christmas 2020 and a proactive Crown response is required.

24. The foregoing factors lead officials to consider that Rio Tinto may be engaging in a time-wasting strategy. This strategy would seek to whittle down the negotiating time available, against the aspirational end of year deadline, to apply maximum pressure to the Crown and produce hastily agreed Crown concessions.
25. Rio Tinto may seek to leverage this strategy in the pre-Christmas period, and advance a public narrative that the Crown is preventing the NZAS workforce from having certainty during the important holiday period.
26. To mitigate this risk, we propose that the Tiwai Group Ministers make a proactive public statement around 11 December 2020, after the second to last negotiating call with Rio Tinto on 9 December 2020 (the last call being scheduled for 16 December 2020). The purpose and content of this public statement would be to:
 - Confirm the Crown has been actively working towards a deal, and continues to do so.
 - Clarify that significant progress remains to be made before a deal can be concluded, and that there is insufficient time remaining in 2020 to conclude a deal.
 - Note that key areas of concern for the Crown remain unresolved, including site remediation and how the toxic waste and hazardous contaminants onsite will be dealt with.
 - Confirm that the Crown remains committed to concluding a deal which includes appropriate remediation commitments, and that negotiations with Rio Tinto will recommence in January 2021. Rio Tinto created uncertainty for the Southland community when it announced its decision to wind down operations of the smelter by August 2021. The Crown has been working to try to address this uncertainty and secure a more orderly exit with a regionally-led transition.
27. Officials will work with your offices to immediately commence drafting this proactive public statement, should it be required at an earlier date.
28. This strategy also takes account of reduced Ministerial and government capacity over the holiday period, with key decision makers and personnel unavailable from 18 December 2020 until 11 January 2021. The Treasury closes from 24 December 2020 until 6 January 2021.

The Crown is preparing for proactive release.

29. Regardless of the negotiation's timing and outcome, officials propose that key briefings and advice related to the Tiwai smelter negotiations be proactively released given the significant public interest. This will clarify the Crown's position in the public domain and share important considerations including the remediation needs of the site.
30. The proactive release would occur only once a deal has been agreed or there was no further prospect of a Crown agreement being concluded. The Crown negotiating team has begun the process of identifying relevant documents and is considering how to manage confidentiality and commercial considerations.

Stakeholder Engagement

The Crown is proactively engaging with key Southland stakeholders, including Ngai Tahu, NZAS' directors and to ensure that the Crown's position in the negotiations is clearly communicated to the public.

31. Rio Tinto has been employing an active engagement strategy with stakeholders throughout the negotiations. The Southland local community has been the focus of considerable engagement by Rio Tinto including from the Chief Executive of their Aluminium branch, Alf Barrios. A further example of this is the \$100,000 donation to Invercargill Women's Refuge from Rio Tinto on 23 November 2020.
32. Some stakeholders appear to have been strongly influenced by a Rio Tinto narrative and there has been little awareness to date of the specific issues the site now faces in regard to disposal of toxic waste, the unlined landfill and other environmental issues. In order to ensure that stakeholders are well-informed in regard to the negotiations, officials have been engaging with a range of stakeholders. The Crown is communicating the following narrative to stakeholders:
 - The Crown has presented a proposal to Rio Tinto and minority shareholder Sumitomo in an effort to delay closure of the Tiwai Point aluminium smelter.
 - Rio Tinto have rejected the proposal and, as yet, have been unwilling to commit to specific remediation outcomes or spending to ensure that the toxic waste and contaminants onsite are appropriately addressed.
 - We are hopeful that Rio Tinto and Sumitomo can continue to work with the Crown to achieve a holistic deal for a delayed closure of Tiwai.
 - The Government is optimistic that with the commitment of all parties we can achieve certainty for the employees of the smelter, the people of Southland and an appropriate environmental outcome.
 - Negotiations are iterative, and given the current state of discussions, any deal is unlikely to be concluded until 2021.
33. Local stakeholders are likely to have a slightly different perspective to the Crown on some issues within the negotiations. For example, the Southland community is less focussed on the quantum of any payment and places more weight on the positive impacts that a delayed closure would have on jobs and the local economy. These messages have been reflected in officials' engagements with the community to date.

Officials and Tiwai Group Ministers have been engaging with key stakeholders within the Southland community to reiterate the holistic approach and to encourage stakeholders to engage with Rio Tinto to advance their interests.

34. The Minister of Finance contacted Gore district Mayor Tracey Hicks on 18 November 2020 and sent a follow up letter to the Southland Mayoral Forum to re-iterate the holistic approach that the Crown is taking to the negotiations, including highlighting the considerable future environment risks posed by the site.
35. The Minister for the Environment sent a letter to the Chief Executives of Invercargill City Council and Environment Southland on 19 November 2020 to request that both organisations undertake an urgent investigation of the environmental condition of the Tiwai Point site under the powers of the Resource Management Act 1991.
36. Officials met with Environment Southland, the Invercargill City Council, and the Southland Chamber of Commerce and Great South on 26 November 2020. The purpose of these engagements was to update stakeholders on progress, to ensure that

they are all aware that the Crown continues to negotiate and has presented a proposal to Rio Tinto.

Officials are working closely with Ngāi Tahu on the negotiations.

37. The Minister of Energy and Resources met with representatives from Ngāi Tahu on 20 November 2020, supported by officials from the Treasury and the Ministry of Business, Innovation and Employment (MBIE). During the meeting, the Minister provided an update on the progress of negotiations with Rio Tinto and Ngāi Tahu provided further insights about their perspectives and interests relating to NZAS.
38. Officials are undertaking a number of steps to involve Ngāi Tahu more closely in the negotiations:
 - Officials have undertaken confidentiality arrangements with Ngāi Tahu and plan to share information including the desktop assessment of site remediation costs and options and a report on NZAS' workforce. This will ensure that Ngāi Tahu are fully aware of the assessments which underpin the Crown's holistic approach to the negotiations.
 - Where needed, officials may be able to provide support in facilitating meetings between the Ngāi Tahu governance group and Tiwai Group Ministers.
 - Ngāi Tahu also indicated a desire to brief regional stakeholders and interested parties and ensure there is an alignment of views. The Crown is helping to facilitate this and held joint Crown/Ngāi Tahu meetings with stakeholders on 26 November 2020.
39. There are a number of sites of cultural significance including burial sites on Tiwai Point. Ngāi Tahu consider parts of the site to be tapu and hold specific importance to the rūnanga.
40. Earlier this year Rio Tinto was responsible for the destruction of a 46,000-year-old aboriginal site in Western Australia, which caused severe reputational damage and backlash from investors. Rio Tinto faces a similar risk in New Zealand if they are not mindful of their obligations and Ngāi Tahu interests relating to the sites of cultural significance at Tiwai Point.
41. Ngāi Tahu have indicated that they are open to engaging with Rio Tinto in relation to remediation and the sites of cultural significance. Our initial assessment is that Ngāi Tahu are best placed to advance their interests on the sites of cultural significance. Officials met with Ngāi Tahu on 26 November 2020 to discuss these issues further.

Officials have ongoing regular engagement with Meridian Energy on a commercial-in-confidence basis.

42. Officials also have regular engagement with Meridian Energy and had a discussion on 27 November 2020 s9(2)(ba)(i)

We propose sending letters to NZAS's directors to affirm their legal duties and obligations.

43. Officials assess that now is the appropriate time for Tiwai Group Ministers to send letters to NZAS's directors, which include Rio Tinto and Sumitomo representatives (T2020/3495 refers). Letters for your consideration and signature are attached in **Annex 1**.

44. These letters affirm the Crown's expectations that NZAS's directors, auditors and shareholders understand their legal duties and obligations in relation to closure and remediation and will have appropriate measures in place to meet them in full.
45. The purpose of sending the letters is to remind directors' of their existing legal obligations and to signal the Crown's heightened interest in the smelter's operations and fulfilment of its obligations.
46. There are some reputational risks in sending the letters, as NZAS's directors are likely to take the position that the New Zealand Government are not creating a supportive business environment and are applying unjustified pressure. On balance, officials judge that the benefits of sending these letters outweigh these risks.

Next Steps

47. If you agree to send the attached letters to NZAS's directors, officials will work with your offices to provide the appropriate contact details and distribute the letters, ideally before the next call between the Crown negotiating team and Rio Tinto at 2pm on Wednesday 2 December 2020.
48. Officials are awaiting a response from Rio Tinto on its position regarding substantive environmental site remediation commitments. It is likely that officials will not hear back from Rio Tinto until our next scheduled negotiating call (on 2 December 2020). Officials will consider Rio Tinto's response and will provide you with a further update on any developments in the negotiations.
49. Officials will also work with Ministers' offices to develop a proactive public statement which can be made by you around 11 December 2020, or sooner, should it be required.

s9(2)(g)(i)





Reference: T2020/3724 SH-11-5-1-4-3

Date: 7 December 2020

To: Minister of Finance (Hon Grant Robertson)

Cc: Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: None
(if any)

Aide Memoire: Project 14 Update 7 December 2020

Purpose

This Aide Memoire outlines considerations for a Ministerial response to the letter of 4 December 2020 from Alf Barrios, the Chief Executive of Rio Tinto Aluminium regarding a delayed closure to Tiwai Point smelter. These considerations may also inform any resulting subsequent Ministerial meeting with Rio Tinto.

This Aide Memoire is **commercial-in-confidence** and contains market sensitive information pertinent to companies traded on the NZX.

Background

Officials met with Tiwai Group Ministers on Thursday 3 December 2020 and we understand from that meeting, Ministers:

- Did not want to pursue a deal without remediation components.
- Are comfortable with a 'wait and see' strategy – that is, see if a deal was going to be undertaken in the short term with Meridian.
- Instructed officials to send an email to Rio Tinto outlining that the Crown remained flexible and open to a deal, if it included remediation components at the Tiwai Point site (this email was sent on Friday 4 December 2020 and is attached).

Subsequent to the Tiwai Group Ministers' meeting, the Minister of Finance received a letter on 4 December 2020 from Alf Barrios, the Chief Executive of Rio Tinto Aluminium. It is our understanding that the Tiwai Group Ministers wish to respond to the letter and would like a meeting with Alf Barrios on 10 December 2020.

Officials suggest you use the letter and subsequent meeting to:

- Reconfirm that site remediation remains a bottom line in any agreement and test whether Rio Tinto are willing to make any more substantive remediation commitments beyond the process commitments already made.
- Indicate that Invercargill City Council and Environment Southland will shortly undertake onsite inspections at the smelter under the Resource Management Act 1991.
- Highlight that the Crown is willing to be flexible on the characterisation and mechanism of support, including payment(s) to offset transmission payments, provided Rio Tinto are able to make satisfactory commitments on site remediation.
- Check whether Rio Tinto is still committed to closing the smelter in August 2021, as previously announced.

Considerations for proposed response

Officials first best advice remains not to conclude a Crown deal, due to the profitability afforded by the Meridian deal, and the expectation that the smelter will continue to operate on this basis. s9(2)(ba)(i)

- Officials view is that Rio Tinto and Sumitomo will not agree to any deal with substantive remediation components (that is, a deal that provides a degree of certainty around remedial process and outcomes for the site).
- s9(2)(ba)(i)
- s9(2)(ba)(i) This further increases the likelihood that NZAS will accept the Meridian deal and remain open beyond August 2021. The letter from Rio Tinto appears to keep this option open by referring to Rio Tinto considering other options to provide certainty to Southland.
- If NZAS decides to close as planned in August 2021 despite the Meridian deal and the improved aluminium outlook, this suggests that the decision is being made for reasons other than the stand-alone economics of the Tiwai smelter. If this is the case, then a substantial amount of additional Crown support is likely to be required to incentivise them to continue operations.

Officials judge that this letter is part of Rio Tinto's negotiation strategy to apply pressure and produce hastily agreed Crown concessions.

- Rio Tinto has deliberately slowed negotiations, while publicly claiming an end of year deadline, to apply maximum pressure to the Crown and produce hastily agreed Crown concessions. For example, during the past three weeks Rio Tinto did not promptly respond to the Crown's s9(2)(j) Southland Transition Bond proposal, and subsequently sought an additional week to table its own verbal proposal, which was never provided.
- This letter appears aligned to this strategy, by referring to the mutual commitment to Tiwai Point workers and the people of Southland to provide certainty by Christmas. Officials remain of the view that the end of year deadline is likely to be driven by the December balance date for NZAS and Rio Tinto's financial statements. If this balance date passes without a decision to extend operations, this will begin to have implications for both Rio Tinto and NZAS (from both a disclosure and solvency perspective respectively).

The letter mischaracterises the Crown's approach to the negotiations.

- Officials and Ministers have been clear since the beginning of discussions that the Government is taking a holistic approach to the negotiations, which includes site remediation. Officials have always been willing to be flexible on the delivery mechanism for relief, including on transmission. However, Rio Tinto and Sumitomo have declined to make any remediation commitments prior to a preliminary closure plan next year.
- As an alternative, the Crown suggested its proposal of a deferred payment linked to remediation spend. This was never characterised as a subsidy and if they accepted the payment Rio Tinto would be able to characterise this as a payment to offset against its transmission charges. Rio Tinto's letter mischaracterises this as the Government changing its position, when in fact the negotiating team was being flexible and responsive to Rio Tinto's concerns on making specific remediation commitments.
- The deferred payment proposal was rejected by Rio Tinto, who undertook to go away and instead consider what could be delivered regarding remediation. However, they have declined to table any counter proposal (even verbally).

Next steps

We attach a draft letter for your consideration for responding to Alf Barrios.

Alistair Birchall, Acting Manager, Firm Support, s9(2)(k)

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

James Shannon, Commercial Advisor, Firm Support, s9(2)(k)



TE TAI ŌHANGA
THE TREASURY

Reference: T2020/3731 SH-11-5-1-4-3

Date: 11 December 2020

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: 14 December 2020
(if any)

Aide Memoire: Project 14: Talking Points for potential meeting with Rio Tinto

Purpose

We understand that you may be meeting with Alf Barrios (Chief Executive, Rio Tinto Aluminium) prior to Christmas regarding a potential extended closure agreement with New Zealand Aluminium Smelters Limited (NZAS). This aide memoire provides you with talking points, should that meeting proceed.

This aide memoire is . The aide memoire contains market sensitive information that may impact on the value of securities listed on the NZX.

Approach to Meeting

We recommend Ministers reiterate that the Government is committed to reaching a mutually beneficial agreement with Rio Tinto that includes environmental site remediation.

Ministers may wish to note that the Crown is willing to be flexible on the characterisation and mechanism of any support, including payment(s) to offset transmission payments, provided Rio Tinto are able to make satisfactory commitments on site remediation.

Officials' view is that Rio Tinto are unlikely to offer any deal with substantive remediation components (that is, a deal that provides certainty about outcomes for the site or allows the Crown associated decision rights).

Proactive lines

You may wish to use the meeting to raise the following points proactively with Rio Tinto:

- The future prospects of the smelter are improving, with international aluminium prices strengthening. How do these improved operating conditions impact the viability of the smelter and your decision to cease operations?
- Regardless of when the smelter ceases to operate, decades of aluminium smelting have resulted in toxic materials onsite. Environmental remediation is, and has always been, a bottom line for the New Zealand Government. The identified closure study, while welcome, does not provide any substantive commitment to remediation. Is Rio Tinto willing to make any site remediation commitments, in particular in relation to the spent cathode lining and the unlined landfill?
- Cabinet has recently approved funding for the Minister for the Environment's proposal for Invercargill City Council and Environment Southland to undertake onsite

inspections at the smelter under the Resource Management Act 1991. These investigations will start soon to assess the extent of onsite contamination.

Defensive lines

Rio Tinto is likely to reiterate its request for a “fixed and fair” transmission price and try to categorise the previous Crown proposals as a subsidy. In response, you may wish to raise the following points:

- Officials and Ministers have been clear since the beginning of discussions that the Government is taking a holistic approach to the negotiations, which includes site remediation.
- During Rio Tinto’s recent negotiations with the negotiating team, the Crown sought remediation commitments. However, Rio Tinto has declined such commitments due to the early stages of your closure planning process (including commitments to Rio Tinto’s own internal standards).
- In consideration of this context, the Crown had offered a deferred payment of s9(2)(f) pegged to Rio Tinto’s own estimate of the cost of site remediation (their \$294m accounting provision). This proposal was also declined by Rio Tinto, with no counter proposals provided.
- Under both of the options the Crown has proposed, Rio Tinto would receive payments it could characterise as it sees fit (including offsetting against transmission charges).
- The offers previously put forward by the Crown, and rejected by Rio Tinto, have never been categorised as a subsidy by the Crown negotiating team.
- If Rio Tinto is willing to offer some form of substantive remediation commitments in return for payment, we are flexible about the mechanism and characterisation of a payment.

Rio Tinto may wish to focus the conversation exclusively around transmission relief. In response, you may wish to raise the following points:

- We have been clear from the outset on our holistic approach and responsibilities as stewards of our New Zealand environment, and we understood Rio Tinto had accepted this when Kellie Parker undertook that the site would be returned to ‘natural landforms’ on our Zoom call on 11 September 2020.
- Looking ahead, the smelter anticipates a reduction in transmission costs under the Electricity Authority’s revised TPM which is likely to apply from April 2023. In addition to NZAS’s reduced transmission charges under the revised TPM, under the current Emission Trading Scheme (ETS), NZAS receives surplus emission units valued around \$31.5m per annum (at current unit prices) – which can be used to offset NZAS operating costs.

Rio Tinto may argue that the Crown has not worked to Rio Tinto’s deadline of reaching an agreement by the end of the year. In response, you may wish to highlight that the Crown has made these negotiations a top priority and continued to work with urgency towards concluding a deal. We hope to give certainty to the people of Southland and particularly the workforce and associated suppliers of Tiwai Point in a timely manner.

Alistair Birchall, Acting Manager, Firm Support, s9(2)(k)

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

James Shannon, Commercial Advisor, Firm Support, s9(2)(k)



TE TAI ŌHANGA
THE TREASURY

Treasury Report: Project 14: Confirming Objectives and Next Steps

Date:	2 February 2021	Report No:	T2021/95
		File Number:	SH-11-5-1-4-3

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Indicate your preferred next steps for negotiating with Rio Tinto.	9 February 2021
Hon Dr Megan Woods Minister of Energy and Resources	Agree to meet with officials in the week starting 8 February 2021.	
Hon David Parker Minister for the Environment		

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
James Shannon	Commercial Advisor, CIUG	s9(2)(g)(ii), s9(2)(k)	✓
Jean Le Roux	Manager, Transitions, Regions, and Economic Development		

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Project 14: Confirming Objectives and Next Steps

Executive Summary

On 14 January 2021 Meridian Energy Limited (MEL) and Rio Tinto announced an agreement on a revised four-year electricity contract for NZAS' Tiwai Point aluminium smelter.¹ The contract substantially lowered NZAS' electricity costs, and allowed NZAS to extend the "economic window" for the smelter, allowing it to continue operations until 31 December 2024.

The MEL agreement alters what the Crown can hope to achieve in a negotiated agreement. The MEL agreement ensures that the Crown's objectives of an agreed extension period of operations and workforce retention are achieved without NZAS receiving Crown funding.

Under its existing mandate, the Crown negotiation team has been continuing discussions with Rio Tinto on the parties' remaining objectives – Rio Tinto's desired transmission pricing reduction and the Crown's expectations for site remediation. With the conclusion of the MEL deal, officials recommend that the Tiwai Group Ministers (Finance, Energy and Resources, and for the Environment) review the Crown's objectives and strategy before progressing these discussions further. Officials seek a meeting with Ministers, or written feedback, ideally before our next meeting with Rio Tinto, currently scheduled for 10 February 2021.

Rio Tinto has proposed a high-level conceptual fund for transmission and remediation in the absence of being able to make environmental commitments or provide material information at this stage. The proposal is weighted in Rio Tinto's favour, carries significant precedent and reputational risks and does not support the attainment of the Crown's remediation objectives. It is therefore undesirable from the Crown's perspective.

Officials consider the best option is to cease or step back from negotiations, given the high risks in continuing negotiations with the current information asymmetries in NZAS' favour. The risks associated with concluding a deal – undermining the Transmission Pricing Methodology, and the environmental precedent effects – are harder to justify given the Crown has already achieved its workforce and regional economic objectives. Stepping back would not preclude the Crown from reinitiating negotiations once material information gaps are reduced in the future, likely once the closure study is concluded.

Should Ministers wish to conclude a deal now, or not wish to be seen to be stepping back from negotiations, officials consider that the approach should be to make a "take it or leave it" full and final offer, provided that the offer committed Rio Tinto to deliver environmental outcomes clearly above legal minima. An alternative option would be to pause negotiations or to reduce their intensity.

The Crown's previous proposal for a balloon payment, which shares similarities with Rio Tinto's proposed fund, provides the best basis for concluding an agreement now, although the likelihood of the parties reaching a consensus on this concept at this point in time is very low. Reaching an agreement now would achieve the objective of securing commitments to future remediation activities and outcomes above the current legal minimum.

If this option was chosen, we recommend a full and final balloon payment proposal is made to NZAS of a total of up to s9(2)(f) in exchange for it spending over \$300m on qualifying remediation expenditure. The offer would be time bound, and expire, for example, on 31 March 2021, with no negotiations undertaken between the parties in the meantime. The offer

¹ New Zealand Aluminium Smelters (NZAS) is a joint venture between Rio Tinto (79.4%) and Sumitomo Chemical Company Limited (20.6%).

would be open for this extended period to allow Rio Tinto and Sumitomo to gain governance approvals.

We also recommend that consideration is given to appropriate and enduring governance and accountability structures, especially once negotiations have concluded, to ensure remediation and just transitions work progresses. Ngāi Tahu have strong aspirations and expectations for the site, including enduring regeneration and governance.

Recommended Action

We recommend that you:

- a. **note** that NZAS has accepted Meridian's discounted electricity offer, greatly improving its underlying profitability, and will extend operations until December 2024
- b. **note** that the Crown's tenure and workforce retention objectives for the negotiations have now been achieved
- c. **note** that negotiations regarding remediation and transmission have continued
- d. **note** that given the change in context caused by the MEL deal, officials recommend Ministers review the Crown's objectives and strategy for its negotiations with Rio Tinto
- e. **note** that Rio Tinto has proposed a remediation fund concept in the absence of being able to make environmental commitments, which does not meet the Crown's remediation objectives
- f. **agree** to the preferred next steps for the Crown negotiating with Rio Tinto:
 - i. Cease negotiations permanently

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Hon David Parker
**Minister for the
Environment**

OR

- ii. Pausing negotiations and recommencing once information gaps reduce (**recommended**)

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Hon David Parker
**Minister for the
Environment**

OR

- iii. The Crown making a "take it or leave it" full and final offer to Rio Tinto

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Hon David Parker
**Minister for the
Environment**

OR

- iv. Continue regular negotiations regarding a remediation for transmission deal (**current status quo**)

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
**Minister of Energy and
Resources**

Hon David Parker
**Minister for the
Environment**

- g. **note** that if the Crown elects to make a “take it or leave it” offer, the Crown’s previous balloon payment proposal is the most likely option to result in an agreement in the near-term, although the likelihood of reaching an agreement remains very low
- h. **note** that making a final balloon payment will achieve the Crown’s objective of providing certainty about the future remediation of the site to a standard above the legal minima
- i. **agree** to meet with officials in the week starting 8 February 2021, or to otherwise provide written feedback, prior to the Crown negotiating team’s next planned engagement with Rio Tinto, currently scheduled for 10 February 2021 at 2pm NZDT

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
**Minister of Energy and
Resources**Hon David Parker
**Minister for the
Environment**

- j. **note** that the Crown negotiating team will delay meeting with Rio Tinto until it receives direction from the Tiwai Group Ministers
- k. **note** that the Treasury is preparing to proactively release key advice once negotiations conclude
- l. **note** that the Crown has a range of non-deal levers that it can use to support its remediation and regional economic objectives
- m. **direct** officials to prepare advice on regulatory lessons learned

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
**Minister of Energy and
Resources**Hon David Parker
**Minister for the
Environment**

- n. **direct** officials to prepare advice on a proposed governance model, including accountability and funding

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
**Minister of Energy and
Resources**Hon David Parker
**Minister for the
Environment**Jean Le Roux
ManagerHon Grant Robertson
Minister of FinanceHon Dr Megan Woods
**Minister of Energy and
Resources**Hon David Parker
**Minister for the
Environment**

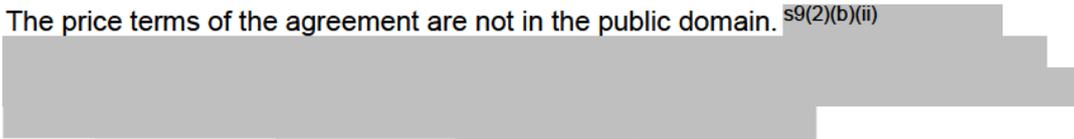
Treasury Report: Project 14: Next Steps on Negotiations

Purpose

1. This report provides an update on Crown negotiations regarding the future of New Zealand Aluminium Smelters Limited (NZAS) and sets out options for reaching an outcome on transmission pricing and remediation of the Tiwai Point smelter site.

The smelter's extension is secured

NZAS has accepted Meridian's electricity offer and will extend operations until at least December 2024, leaving remediation and transmission to be resolved

2. On 14 January 2021 Meridian Energy Limited (MEL) and Rio Tinto announced an agreement for a reduced-price electricity contract to enable NZAS to continue smelter operations until at least 31 December 2024.
3. The price terms of the agreement are not in the public domain. ^{s9(2)(b)(ii)} 
4. The agreement covers a total of 572MW of electricity, which would enable NZAS to operate three potlines. There is an option for NZAS to reduce consumption to 400MW after a six-month notice period. This option is available from 1 January 2022, which provides future optionality for NZAS to shut potlines. The remaining 400MW of electricity can only be terminated by either party under "force majeure" clauses².
5. The MEL deal significantly improves NZAS' underlying profitability and the size of the deal means the smelter's underlying profitability is robust except for its exposure to a significant fall in aluminium prices. The deal also provides NZAS with future optionality to reduce electricity consumption to help manage against the commercial risks and fluctuations inherent in the aluminium market.
6. MEL has commented publicly that there is no contractual right for NZAS to renegotiate terms to extend operations beyond 2024. MEL sees the price agreement as "unsustainable" in the long term and has indicated that it expects NZAS to exit New Zealand after the agreement ends. MEL will be seeking alternative customers and uses for Manapouri's electricity load and it is likely that NZAS will have far less leverage in 2024. NZAS is also likely to have to consider capital expenditure if they continue operating beyond 2024.
7. While the MEL deal provides no contractual right to renegotiate an electricity contract, it does not prevent NZAS from securing a contract, either from MEL despite their current position, from another electricity provider, or from purchasing electricity from the spot market (without a hedge).
8. While the economics of Tiwai Point are likely to look more challenging in 2024, it remains possible that NZAS may be able to continue operations past this point. Rio Tinto will place option value on Tiwai and are unlikely to commit to any agreements that

² A contract clause which frees both parties when an extraordinary event or circumstance beyond the control of the parties, described by the legal term 'act of God', prevents one or both parties from fulfilling their obligations under the contract.

lead them towards closure. Presumably part of the value Rio Tinto place on transmission relief includes an expectation that it will continue past 2024 and be 'baked in' for future operations.

9. Other Tiwai-related activities and updates are included in **Annex 1**.

NZAS' acceptance of the MEL agreement ensures that the Crown's objectives of tenure and workforce are achieved without NZAS receiving Crown funding

10. The Crown's negotiations with Rio Tinto have pursued the holistic approach with the following objectives:
- a) Rio Tinto continuing to operate the smelter for a defined period (e.g. 3-5 years).
 - b) Rio Tinto committing to maintain an agreed level of employment before the agreed closure date, to provide certainty for the smelter's workforce.
 - c) Rio Tinto agreeing to specific site remediation outcomes or activities for NZAS, as outlined in the Deputy Prime Minister's letter of 15 December 2020 to Alf Barrios:
 - i. Removal of all spent cathode lining (SCL) and contaminated soil under the pot lines, recycled or disposed of, safely and securely offsite in accordance with modern standards.
 - ii. Excavation of the smelter's unlined landfill, and ensuring all material is either recycled or disposed of safely and securely offsite, at a landfill that complies with modern standards and is not subject to risks of coastal erosion or rising sea levels.
 - d) Allow independent onsite inspections to undertake sampling and testing on the smelter site to establish a baseline and ongoing understanding of the pollution and toxic waste at the site.
 - e) Rio Tinto and Sumitomo being parties to the agreement, or otherwise providing appropriate guarantees for all commitments.
11. In return, Rio Tinto has been seeking a reduction in its transmission charges. The Crown has been exploring how to address Rio Tinto's position, while avoiding a solution which undermines the current or future Transmission Pricing Methodology (TPM).
12. The MEL agreement commits NZAS to continue smelter operations until 31 December 2024. This provides certainty for Southland and time to develop an appropriate transition plan for the region.
13. The MEL agreement also ensures that NZAS retains most of its workforce until December 2024. While personnel levels may drop if Rio Tinto exercises its option to reduce its hedged electricity consumption to 400MW, most of the current workforce is expected to be retained.

Reconfirming objectives for achieving remediation outcomes

With the conclusion of the MEL deal, officials require Ministerial direction about the objectives and mandate for further negotiations with Rio Tinto

14. The Crown's negotiating mandate was reaffirmed in December 2020 following an exchange of letters between Rio Tinto and the Deputy Prime Minister. At that time a degree of uncertainty persisted about NZAS' continued operation.

15. The MEL agreement reached in January 2021 delivers several of the Crown's objectives and substantively changes what the Crown would achieve through any deal, as now the Crown's interest is limited to remediation outcomes.
16. Officials understand from the Minister of Finance's office, that the Minister of Finance would like to continue to negotiate towards a deal with remediation as a bottom line. We also understand that this has been conveyed to Rio Tinto. On this basis officials have continued negotiations within the current negotiating mandate but see value in revisiting and confirming objectives now the MEL deal has been concluded.
17. Rio Tinto are continuing to engage in discussions and have put forward an option for consideration (a remediation fund proposal).

The Crown negotiation team has been continuing negotiations with Rio Tinto on transmission pricing and site remediation

18. The Crown negotiating team has met with Rio Tinto on three occasions since the New Year: 13 January 2021 (prior to the announcement of the MEL agreement), 20 January 2021 and 27 January 2021 to discuss transmission and remediation.
19. While Rio Tinto's correspondence with the Deputy Prime Minister prior to Christmas could be interpreted as reflecting a softening in Rio Tinto's position regarding remediation, we consider that Rio Tinto's negotiating position remains unchanged. In the view of officials – who have been able to test the proposals with Rio Tinto – we consider the proposals are so uncertain or contingent that they are not capable of forming the basis for a legal agreement in their current form. For example, Rio Tinto requested that the government create a novel in-country pathway for the treatment of their SCL, which does not currently exist, and they did not accept excavation and replacement of the landfill. In effect, Rio Tinto's letter to the Deputy Prime Minister on 18 December 2020 can be read as rejecting all the key requirements Ministers have put forward. Rio Tinto has now also ruled out financial surety being provided by it or Sumitomo.
20. Rio Tinto's remediation fund proposal (discussed next) makes no additional remediation commitments and is an attempt to reach an agreement with the Crown in the absence of such commitments.
21. NZAS has stated publicly since the conclusion of the MEL deal that it requires a Crown agreement on transmission charges to reduce its risk exposure to the volatile aluminium market.
22. The Crown negotiating team has repeatedly conveyed Ministers' expectations that environmental remediation is a bottom line. This means that for any Crown agreement to be reached, NZAS is expected to make environmental commitments regarding the outcomes that will be achieved, or the activities undertaken.
23. Key themes from discussions with Rio Tinto's negotiating team in 2021 include:
 - a) NZAS' closure planning processes and timing remains unchanged, with the preliminary closure study report to be completed in Q4 2021. Rio Tinto has indicated that it *may choose* to share appropriate outputs of the process with the Crown as part of a potential agreement.
 - b) While NZAS's closure planning process is underway, Rio Tinto remains unwilling or unable to make any commitments to remediation outcomes or activities. Rio Tinto states that this is due to the uncertainty associated with the nature and extent of the remediation they will undertake.
 - c) The environmental commitments NZAS is willing to make are limited to the high-level provisional undertakings provided in Alf Barrios' letter of 18 December 2020:

- i. Commitment to removing all spent cell lining once the government helps NZAS establish an in-country pathway that doesn't currently exist.
 - ii. Commitment to ensuring there is no contamination from the onsite landfill into the receiving environment.
- d) NZAS reports that it is undertaking significant sampling and testing, which could go some way to filling both parties' information gaps regarding the current state of the site. Rio Tinto will consider the Crown's request for independent onsite environmental assessments once the Crown determines its testing and sampling information requirements, for inclusion in a potential agreement. To date Rio Tinto has been unwilling to allow site inspection and has put forward a range of reasons for declining access. The Crown has also requested an overview of NZAS' sampling and testing.

Rio Tinto has proposed a high-level conceptual fund for transmission pricing and remediation in the absence of being able to make environmental commitments

24. On 20 January 2021 Rio provided a verbal overview of its proposal, followed by a written summary on 26 January 2021. Rio Tinto proposes that the Crown agrees to establish a remediation fund now, while significant information gaps about the state of the site exist, and while Rio Tinto remains unwilling to commit to environmental outcomes or activities.

25. The main features of the proposal are:

- a) The Crown provides NZAS with a transmission rebate. The quantum of such a payment remains to be determined. ^{s9(2)(i)} [REDACTED]
- b) NZAS commits to allocating a portion of the Crown's transmission rebate, for example, 50%, into a fund with remediation as a main purpose. No additional funds contribute to the account.
- c) The fund continues to accumulate funding so long as the Crown continues to provide a transmission rebate.
- d) The fund is held by the Crown or the Crown's agent.
- e) The parties would agree the priority focus for how the funding would be allocated and spent. Beyond offering to generally spend such a fund on the SCL and/or landfill, Rio Tinto have not provided any further detail about the remediation activities they would undertake or the outcomes they would achieve.
- f) Any residual funds would be returned to NZAS.

26. ^{s9(2)(i)} [REDACTED]

Rio Tinto's proposed fund is weighted in its favour and does not support the attainment of the Crown's remediation objectives and is therefore undesirable

27. Rio Tinto's proposal is orientated to its own interests – it would commit the Crown to a payment and provide immediate transmission relief without NZAS committing to any environmental activities or outcomes. The Crown is required to concede on remediation to reach agreement. From the Crown's perspective, the undesirable features of the proposed fund include:

- a) It is not clear how the proposed fund will achieve the Crown's remediation objectives as Rio Tinto remains unwilling to make commitments regarding remediation outcomes or activities.
 - b) There would be no direct financial contribution by NZAS' owners. The Crown would provide a transmission rebate payment and NZAS would allocate a portion of the rebate to the fund.
 - c) NZAS could spend the funds on activities it was already planning to undertake, or otherwise allocate the funding towards achieving the legal minimum standards it is obligated to achieve. It is undesirable for the Crown to contribute funding towards a commercial operator's attainment of legal minimum standards.
 - d) The fund could reasonably be perceived to be a transmission and/or environmental remediation subsidy. This is especially the case given NZAS and Rio Tinto's repeated public statements about their desire for transmission relief.
 - e) It could potentially undermine the current TPM and the anticipated future TPM changes in 2023 by providing a commercial operator with Crown funding to support its operating costs (be they transmission or remediation).
28. While significant details would need to be negotiated and agreed, the attractiveness of the proposed fund is low given the Crown's remediation bottom lines. ^{s9(2)(f)}
29. The proposal seeks to bind the Crown now, while significant information asymmetries exist in Rio Tinto's favour. These information gaps will close over time, regardless of whether the Crown reaches an agreement with Rio Tinto.

Negotiating options

Option 1: cease negotiations permanently

30. The Crown may choose to permanently leave negotiations given the months of negotiations already undertaken and Rio Tinto's continued inability to make environmental commitments or any other concessions. The prospect for reaching an agreement is very low and the Crown may better spend its time and resources on other priorities. Crown work on related priorities can still continue for example, regulatory work on remediation, and just transition activities (discussed below).
31. Separately, with the benefit of the MEL deal, Rio Tinto may reach a similar conclusion and choose to leave negotiations itself at any time. However, we assess that there are low costs for Rio Tinto maintaining a seat at the negotiating table and they are unlikely to leave negotiations while there is a prospect, however low, of receiving Crown funding (this was the Crown's experience in 2013).

Option 2: pause negotiations and recommence once information gaps reduce (recommended)

32. The Crown could pause and recommence negotiations once Rio Tinto has sufficient remediation information to enable it to make commitments. The Crown has previously proposed both environmental outcomes and activities for Rio Tinto to commit to, which it has rejected. With better information the Crown can make an informed decision about the benefits and costs of entering any agreement. Under this option, negotiations could recommence at any or all of the following key milestones:
- a) After NZAS has revised and published its revised remediation accounting provision in Q2 2021.

- b) Once NZAS' preliminary outputs from its closure study process are shared with the Crown in Q4 2021.
 - c) When NZAS completes its closure planning processes and shares relevant information with the Crown in 2023.
 - d) Shortly before the smelter ceases to operate, currently scheduled for 31 December 2024.
33. It remains an open question whether NZAS will ever make adequate and meaningful information available to enable the Crown to make an accurate assessment of the true extent of the remediation requirements, their likely cost, and NZAS' minimum legal obligations.
34. Rio Tinto's negotiating position to date has been to deny the Crown access to accurate information about the state of NZAS' environmental remediation obligations, and to make no meaningful commitments. It remains unclear whether Rio Tinto will ever provide clear and certain information and concrete commitments at any stage.
35. If the preferred option, an appropriate communications plan would be developed, leveraging NZAS' acceptance of the MEL deal and the benefits it brings, while using the future timelines for the closure study process as the anchor points for further Crown engagement, once material information becomes available.

Option 3: the Crown makes a “take it or leave it” full and final offer to Rio Tinto based on the balloon payment mechanism previously discussed

36. The key question for the Tiwai Group Ministers is the value they place on reaching an agreement now, relative to a future potential agreement. The objectives for reaching an agreement now would be to provide certainty about future remediation activities and outcomes in the face of current information constraints. This would prioritise the value of a certain outcome now, against the possibility of a potentially better-informed position and future outcome. Ministers would also be seen to be fulfilling their commitment to reach a deal regarding the smelter's future. Reaching an agreement now should also be weighed against the precedent effect for the TPM and remediation obligations of other large industrials.
37. The Crown's previous proposal for a balloon payment, which shares similarities with Rio Tinto's proposed remediation fund, provides the best basis for concluding an agreement now, should that be desired. On 18 November 2020, at the direction of Ministers, officials proposed a balloon payment to Rio Tinto. The key features of the balloon payment proposal were (T2020/3495 refers):
- a) NZAS spending the equivalent of its current remediation accounting provision on qualifying remediation expenditure (approximately \$300m) once operations had ceased.
 - b) In return the Crown would provide up to a ^{s9(2)(i)} payment which NZAS could use to offset its operating costs, for example its transmission costs.
38. Rio Tinto's proposed fund and the Crown's previous balloon payment proposal share the same objective of creating a mechanism agreeable to both parties now, in the absence of material information about the state of the site. The main difference is that Rio Tinto's proposal does not deliver any specific environmental outcomes or activities, while the Crown's balloon payment proposal stipulates a sufficiently high threshold of qualifying remediation expenditure to ensure that some of the Crown's remediation objectives are achieved.
39. Rio Tinto and Sumitomo rejected the balloon payment proposal on 25 November 2020, (prior to the agreement with MEL), partly because they considered it to be

unacceptable remediation assistance. It is unclear how Rio Tinto's current fund proposal avoids a similar characterisation nor whether their view might have changed given the extension of operation until December 2024.

40. A balloon payment proposal carries risks. The potential expenditure threshold of \$300m is significantly below the expected total remediation cost, based on desktop analysis (but higher than the cost of achieving the legal minimum standard). While the balloon payment would secure remediation expenditure of \$300m, the Crown is not securing any specific activities or outcomes that it may desire. The chosen \$300m, while informed by the best information currently available, could prove to be too low.

s9(2)(ba)(i)

Environment Southland's enhanced testing and sampling regime may also uncover additional and costly remediation requirements. In such instances, the Crown will be seen to have agreed a level of remediation below what is necessary.

Structure of a final "take it or leave it" offer based on the balloon payment

41. The Crown proposes a final balloon payment, which indirectly achieves the Crown's remediation objectives in the absence of the necessary information and resulting commitments from Rio Tinto. Under this option, the Crown commits to a payment once Rio Tinto surpasses an agreed expenditure threshold for qualifying remediation expenditure. The key features of such an offer are:
- i. A full and final offer from the Minister of Finance on behalf of the Tiwai Group Ministers and the New Zealand Government.
 - ii. A maximum Crown contribution of s9(2)(i) in return for Rio Tinto having qualifying remediation expenditure of \$300m³.
 - iii. A right for the Crown to conduct periodic onsite environmental sampling and testing.
 - iv. The offer expires, for example on 31 March 2021, to allow for Rio Tinto and Sumitomo internal approval process and no further negotiations are undertaken in the interim.
42. The prospect of Rio Tinto agreeing to a revised balloon payment offer is very low, given its previous rejection of the concept in 2020. However, given NZAS's acceptance of the MEL deal, the prospect of securing funding they could frame as transmission relief and the similarities with Rio Tinto's remediation fund proposal, there is a chance, albeit low, that Rio Tinto may agree to a balloon payment.
43. If Ministers are interested in making a final balloon payment offer to Rio Tinto, we will provide additional advice about the features and the timing of the offer, and defer further discussions with Rio Tinto until a response to the formal offer is received.
44. Rio Tinto's urgency for agreeing a deal with the Crown may now be diminished, as it has secured most of the cost savings available by accepting the MEL deal. The transaction costs for Rio Tinto continuing negotiations are also likely to be low, and they may be incentivised to continue or prolong negotiations, even if the prospect of success is low, unless the Crown sticks firmly to its bottom lines.

³ The qualifying remediation expenditure under the existing Environmental Restoration Account provide a starting point from which more specific and limited criteria would be developed.

Option 4: Continue regular negotiations regarding a remediation for transmission deal

45. Ministers can choose to continue the current approach to negotiations, with the Crown and Rio Tinto continuing to negotiate and meet weekly, with the Crown maintaining a dedicated cross-agency negotiating team.
46. Without further information, or the parties modifying their respective remediation positions, the prospect of reaching agreement appears to be very low. There are significant resourcing implications for the Crown to support such weekly negotiations.
47. Alternatively, negotiations could be scaled back with the frequency of negotiations reduced while keeping dialogue open, for example to quarterly or monthly meetings instead of weekly. This option acknowledges the significant information gaps, and the time required to resolve them, as well as the operational and opportunity costs of continuing negotiations with a low prospect for success.

Negotiation next steps

48. The Crown negotiating team and Rio Tinto have agreed to defer their next weekly negotiating call to enable Ministers to consider this advice and provide directions about preferred next steps. The Treasury negotiating team proposes meeting with the Tiwai Group Ministers ideally before the negotiating teams reconvene on Wednesday 10 February 2021 at 2pm NZDT to continue discussions. Alternatively, officials welcome written feedback from the Tiwai Group Ministers, or can defer meeting again with Rio Tinto until Ministers have considered this advice.
49. The Treasury is preparing to proactively release key advice and briefings, with appropriate redactions, once negotiations have concluded. In the meantime, MFE, MBIE and Environment Southland (ES) have received Official Information Act requests with very large scopes and officials are considering what should be released and withheld while negotiations continue.

Work underway to address the wider implications of the smelter negotiations

The agreement to extend smelter operations until 2024 has implications for potential alternative uses of both the Tiwai Point site and the electricity generated at Manapouri

50. Repurposing the electricity provided to the smelter is an attractive opportunity for many potential users. However, it is unclear which if any proposals will proceed beyond the concept stage, nor what they will require to come to fruition. The confirmation that the smelter will stay until the end of 2024 may now preclude some proposals or may provide greater lead-in time which could be advantageous for others.
51. In addition, while the electricity hedge contract with MEL terminates in 2024, and Rio Tinto is signalling closure through its closure planning exercise, some market analysts argue there is the possibility of the smelter remaining in some form post 2024; particularly if the profitability of hydro powered aluminium production improves relative to the subsidised fossil fuel based aluminium production that currently undercuts it.
52. Officials at MBIE will monitor this issue and also consider what role the Crown should play in any discussions surrounding the future use of the Tiwai point site and electricity provided to the smelter.

Officials are considering how best to ensure that the lessons learnt from negotiations are embedded into future policy and regulatory work

53. The negotiations with Rio Tinto and supporting workstreams have generated insights across a number of policy areas, including:
- a) Transmission Pricing Methodology
 - The regulatory system governing the TPM is concerned with establishing an efficient allocation of costs among transmission grid users, as opposed to determining a 'fair' allocation of costs. The current TPM review process seeks to improve the efficiency of cost allocation, the eventual outcome of which will result in 'winners and losers' - NZAS being one of the winners.
 - The TPM regime has been continuously under review for over a decade with multiple failures to introduce improvements. The lengthy drawn-out and controversial nature of the current review has given additional weight to some users' concerns about the 'fairness' of pricing and arguably undermined confidence in the system. It is important that the current review is completed and implemented as soon as possible to re-establish confidence in the regime.
 - b) Environmental laws and regulations, in particular the remediation obligations of legacy industrial polluters.
 - The Minister for the Environment has sought advice from his officials on the potential for improvements to New Zealand's contaminated land and orphan sites liability regime.
 - Liquidators have the power under section 269 of the Companies Act 1993, to disclaim hazardous substances and waste (and probably also contaminated land) as "onerous property", thereby resulting in that property becoming *bona vacantia* and the responsibility of the Crown.
 - There is no single piece of legislation that specifically addresses contaminated land. Unlike other jurisdictions the RMA does not provide a clear hierarchy of liable parties (e.g. polluter, owner, and occupier) which can then pose difficulties in allocating liability where multiple parties have past or present interests in a contaminated site.
 - Councils and regional regulators face a conflict of interest in regulating large industrials that are large employers within their region.
 - Several company failures in recent years have left stockpiles of hazardous substances or hazardous wastes that have not been disposed of appropriately. Local and central government is often left as the 'last person standing' to fund their clean-up.
 - We are also facing a changing industrial landscape in New Zealand where several large industrial operations are nearing end of life after 50 or more years of operation. Their decommissioning is likely to require complex, challenging and costly remediation.
 - MFE expects to be in a position to provide a further update on progress with this advice in late February.
 - c) The Crown's ownership interests in Meridian.
 - The Minister of Finance may wish to ask Meridian about their progress in finding alternative customers and uses for Manapouri's generation given how much leverage NZAS retain if sufficient alternatives are not identified.

54. Officials are undertaking further work to document these findings and determine whether the learnings from the NZAS negotiations can be applied more widely. Officials will provide further advice to you on this, including making recommendations on any additional policy or regulatory work that could be completed.

Work has commenced on considering enduring governance arrangements

We recommend Ministers consider appropriate and enduring governance and accountability structures to progress necessary remediation and just transition work, regardless of what happens in negotiations

55. The Crown's negotiations are currently overseen by a temporary Steering Group, convened by the Treasury⁴. This Group coordinates the Crown's approach across agencies including the commercial aspects of the negotiations, remediation expectations and commitments, energy markets policy, and transition for the Southland region.
56. The Crown negotiating team appears to have been effective in providing a single point of contact for stakeholders, particularly Iwi. There is an expectation from Iwi and the community that this continues and that the Crown remains engaged with the environmental and economic challenges faced by Southland.
57. The Crown was very exposed to the exit of NZAS in 2020, in terms of its impact on Southland, the potential effect on transmission charges, and the lack of certainty regarding site remediation. The extended closure provides four more years to progress a series of non-deal levers that can help reduce NZAS' leverage, including by:
- a) Developing options to encourage diversification of the local economy.
 - b) Complete any necessary policy work on the energy / transmission and environmental regulatory systems.
58. The Crown negotiating team recommends a structured work programme (including governance) so that significant progress is made against these objectives during the period of Tiwai's extended operations. We assess that an enduring approach to governance is required to ensure that government activity across agencies is well coordinated and aligned. Clear lines of accountability will be required as well as funding, to ensure good outcomes are achieved. This will help to ensure that stakeholders have continued confidence in the Crown's approach, that the Crown's objectives can be achieved, and the risk of fragmented activities is reduced.
59. Central government is organising itself at the central and regional level around the Murihiku regeneration plan and governance structure, developed by the four Murihiku Papatipu Rūnanga. This provides an opportunity for the public service to practice a more joined-up government in Southland, with strong structures and foundations in place or underway to facilitate and drive a regionally led, centrally-supported approach.
60. At the central level, the Chief Executive (CE) of the Ministry of Social Development (MSD) has formed a Murihiku CE's Group, comprising leaders of MBIE, TPK, DoC, MoE, TEC, MfE and The Treasury. This group also regularly engages with Murihiku Regeneration leadership. The aim is to support community led work on the Murihiku Regeneration plan and resolve issues that cannot be resolved locally where the decision-rights sit in Wellington.

⁴ Membership includes Caralee McLiesh (TSY), Bryan Chapple (TSY) Andrew Hagan (TSY), Carolyn Tremain (MBIE), Chris Bunny (MBIE) and Dr Alan Bollard (independent).

61. At the regional level, the Regional Public Service Lead is working with Just Transitions to convene the relevant public service leaders to work alongside local government and iwi to support progress on Murihiku Regeneration priorities. Regional Public Service Leads (RPSL) were appointed to provide system-level leadership aimed at creating a more joined-up public service. In Southland, MSD's Regional Commissioner Southern has been designated as the RPSL, with the mana and mandate for convening cross-agency decision making forums around regional priorities and issues.
62. This work to establish better ways of working, facilitated by the support of CEs, the Regional Public Service Lead and regional officials, supported by the Just Transitions Partnerships team, means that the public service is well-placed to establish a more enduring and effective Crown governance arrangement and support the Murihiku Regeneration Plan and wider Southland community goals.

Annex 1: Other Tiwai-related activities underway

Rio Tinto's senior leadership is undergoing changes, with Alf Barrios promoted to the group's Chief Commercial Officer

1. Rio Tinto unveiled a new executive team on 28 January 2021⁵. The changes include a shift in role for Alf Barrios, and a promotion for Kellie Parker, both of whom have been involved in negotiations as senior Rio Tinto decision makers and have met with Ministers.
 - a) Aluminium Chief Executive Alf Barrios, a role he has held since 2014, will become Chief Commercial Officer. Ivan Vella will take on the role of Aluminium Chief Executive.
 - b) Kellie Parker, currently Managing Director Pacific Operations Aluminium, will join the Rio Tinto Executive Committee, as Chief Executive Australia with a focus on rebuilding trust and strengthening external relationships across Australia.
2. The new leadership team is effective from 1 March 2021. The consequence of these changes for the Tiwai negotiations, and the Rio Tinto personnel involved, remain to be determined.

MBIE's Just Transition Partnerships team continues to coordinate a cross-government approach and engage with stakeholders to understand what support might be required to ensure a just transition following the closure of NZAS 2021

3. The Just Transition Partnerships team (JTP) will be travelling to Southland to support the Regional Public Service Lead (Jason Tibble) to convene a regional officials meeting and engage with regional partners on 4 – 5 February 2021. The meetings will:
 - a) Convene regional officials to progress a cross-government approach to support Southland (discussed further in the next section).
 - b) Provide an update to and canvass views of the Southland Mayoral Forum.
 - c) Seek further engagement with representatives of NZAS.
 - d) Seek further engagement with representatives of Ngāi Tahu.
4. A key expected outcome of the regional officials meeting is to seek agreement and commitment to a shared process and structure that can ensure strategic coordination and allocation of resources from the public service to the region, alongside the development of a more streamlined process for engagement and partnership with iwi and local government.
5. The JTP team have also been engaging with Rio Tinto's Closure Study Planning Group to better understand NZAS' closure process and how it might align with a just transitions process that is fair and inclusive for affected workers.
6. The JTP team will advise responsible Minister(s) about the outcomes and insight of these activities in Southland in due course.

s9(2)(ba)(i)



⁵ <https://www.riotinto.com/news/releases/2021/Rio-Tinto-unveils-new-Executive-team>

8. s9(2)(ba)(i) [redacted] The permissive nature of many of the smelter’s historical consents do not meet current societal expectations for environmental standards.

9. s9(2)(ba)(i) [redacted] The dross cell is covered by a geosynthetic textile layer to stop infiltration of rainwater, but the base is not lined. Approximately 106,000 tonnes of spent cell liner are stored on the storage pad, while approximately 70,000 tonnes are stored in storage sheds. s9(2)(ba)(i) [redacted]

10. s9(2)(ba)(i) [redacted]

Transpower’s accelerated timeline for the Clutha Upper-Waitaki lines project remains unchanged, while the smelter’s transmission lines are upgraded

11. Transpower investments to reduce the impact of the lower South Island transmission constraints remain unchanged. The remaining section of the Clutha Upper-Waitaki lines project (namely the duplexing of the Roxburgh to Livingstone section of the Roxburgh-Islington line) remains on track for an expected completion date of May 2022. s9(2)(ba)(i) [redacted]

12. s9(2)(ba)(i) [redacted]

13. The opportunities available for public input into the reform of the Transmission Pricing Methodology and related mechanisms, including the Prudent Discount policy, have largely been concluded, though Transpower continues to explore options to engage further with interested parties. s9(2)(ba)(i) [redacted]

[redacted] The Electricity Authority is required to consult on the new TPM (which Transpower will deliver to it by 30 June 2021), and which will include a Prudent Discount Policy. This consultation will provide a final opportunity should NZAS and Pacific Aluminium wish to provide feedback about the proposed changes.

14. s9(2)(ba)(i) [redacted]

Ngāi Tahu have strong aspirations and expectations for the site, including enduring regeneration and governance

15. s9(2)(ba)(i) [redacted]

s9(2)(ba)(i)



16. Meeting Ngāi Tahu expectations going forward will require collaboration between Crown agencies, supported by strong governance and accountability of Crown led programmes in Southland. Ngāi Tahu has a strong interest in ensuring robust planning and cohesion between Crown agencies and various work programmes underway i.e. the MBIE-led Just Transitions process and Ministry of Environment's remediation programme.
17. We recommend Ministers continue to encourage relevant agencies to work to set up a strong governance structure with clear and open lines of responsibilities.



Treasury Report: Project 14: Update on Negotiations

Date:	18 February 2021	Report No:	T2021/280
		File Number:	SH-11-5-1-4-3

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree the desired length of time to defer commercial negotiations with Rio Tinto.	22 February 2021
Hon Dr Megan Woods Minister of Energy and Resources	Note that during this deferral, officials will progress a broader work programme to achieve remediation and regional economic development outcomes	
Hon David Parker Minister for the Environment	Agree the preferred governance approach (if any) for this broader work programme Note the proposal to proactively release key advice once the deferral of negotiations is made public.	

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
James Shannon	Commercial Advisor, Commercial, Infrastructure & Urban Growth	s9(2)(k), s9(2)(g)(ii)	✓
Jean Le Roux	Manager, Transitions Regions and Economic Development		

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Project 14: Update on Negotiations

Executive Summary

The Tiwai Group Ministers (Finance, Energy and Resources, and Environment) have decided to defer commercial negotiations with Rio Tinto regarding the transmission relief it seeks, in return for appropriate remediation of the Tiwai Point aluminium smelter site. Deferring commercial negotiations allows time for the Crown to gather information and understand the full extent of the hazardous and toxic material onsite before entering any agreement.

This report proposes options for the length of deferral. Officials' preferred approach is to defer negotiations until New Zealand Aluminium Smelters Limited (NZAS) has completed its full Closure Study process in 2024. There is no disadvantage to the Crown in deferring negotiations for this period. This timeline also allows the Crown to benefit from other information sources, primarily Environment Southland's (ES) onsite sampling and testing, and Ngāi Tahu's onsite cultural assessments.

It remains unclear if Rio Tinto will ever share the information necessary for the Crown to make an appropriately informed decision about entering an agreement on site remediation. It could be that more information reduces the attractiveness of any potential agreement, for example, if the contamination of the site is worse than anticipated.

Deferring the commercial negotiations does not mean the Crown's involvement in the site ceases. Activities to support the region's transition will continue. The deferral is to the Crown's advantage as it builds its information base, regulatory changes take effect, including the new Transmission Pricing Methodology, and regional economic development activities progress. The Crown will be in a stronger position for any future negotiations.

The Crown is continuing to engage with NZAS' Closure Study processes through MBIE and MFE, and the Just Transitions planning process for the Southland region is progressing. We recommend light-touch governance is required to ensure the Crown's actions remain coordinated. The MSD convened Murihiku Chief Executive's Group is an existing governance arrangement that could provide such oversight while negotiations are deferred.

Several live Official Information Act 1982 (OIA) requests illustrate the public interest in the status of negotiations. Once the decision to defer negotiations is publicised, we assess that there are only limited grounds to withhold key advice, as the issue is no longer under active consideration nor likely to prejudice negotiations. Given that most information would be released under the OIA, we advise that proactive release of key information is the best way to manage the release of information to the public.

We recommend proactively informing key stakeholders of the deferred negotiations, prior to informing Rio Tinto.

ES has lodged as an interested party (at this stage in a neutral position) in private litigation against NZAS seeking an enforcement order under the Resource Management Act 1991 to remove the toxic Spent Cathode Lining (SCL) stored onsite. The litigation is novel and does not appear to have a high prospect of success. However, it is expected to heighten public and media attention about the state of the site.

Recommended Action

We recommend that you:

a. **agree** to defer negotiations with Rio Tinto:

i. Until 2024 when Rio Tinto has completed its Closure Study process (**preferred option**)

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

OR

ii. Until Rio Tinto has revised its remediation accounting provision (Q2/Q3 2021)

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

OR

iii. Until Rio Tinto has completed its preliminary Closure Study (Q4 2021/Q1 2022)

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

OR

iv. Until closer to the scheduled smelter closure (31 December 2024)

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

b. **agree** to the Tiwai Group Ministers proactively informing Ngāi Tahu and key stakeholders (Southland Mayoral Forum, Invercargill City Council, Environment Southland) of the deferral decision, prior to informing Rio Tinto

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Energy and Resources

Hon David Parker
Minister for the Environment

- c. **note** that ES has lodged as an interested party in private litigation against NZAS seeking an enforcement order to remove the Spent Cathode Linings (SCL), and separately, ES is considering its own enforcement action for the containment and/or removal of the SCL
- d. **note** that officials have prepared advice on proactive release, with the intention to proactively release key advice at the same time as the public announcement of the deferral of negotiations, or as soon as practical thereafter
- e. **note** that a light-touch, existing governance arrangement is required to ensure the Crown's activities remain coordinated during the deferral of negotiations
- f. **agree** that the Murihiku Chief Executive's Group, convened by the Ministry for Social Development (MSD), is an appropriate governance arrangement to provide Crown coordination and oversight while negotiations are deferred, and

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
**Minister of Energy and
Resources**Hon David Parker
**Minister for the
Environment**

- g. **direct** your officials to work with MSD to accordingly expand the scope and ambit of the Murihiku Chief Executive's Group to coordinate remediation and regional economic development issues.

Yes / No

Yes / No

Yes / No

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
**Minister of Energy and
Resources**Hon David Parker
**Minister for the
Environment**

Jean Le Roux
Manager, Transitions, Regions and Economic Development

Hon Grant Robertson
Minister of FinanceHon Dr Megan Woods
**Minister of Energy and
Resources**Hon David Parker
**Minister for the
Environment**

Treasury Report: Project 14: Update on Negotiations

Purpose of Report

1. This report seeks your agreement on your preferred duration of deferral for negotiations with Rio Tinto and provides information about the proposed accompanying communications plan. It also seeks your direction for how ongoing work will be governed during the deferral of negotiations.

Options for deferring negotiations

Deferring negotiations allows time for the Crown to gather information and understand the full extent of the hazardous and toxic material onsite before entering an agreement

2. It remains an open question whether New Zealand Aluminium Smelters Limited (NZAS) will ever make adequate and meaningful information available to enable the Crown to make an accurate assessment of the true extent of the remediation requirements, their likely cost, and NZAS' minimum legal obligations.
3. Tiwai Group Ministers directed that negotiations pause and recommence once these information gaps reduce in the Crown's favour (T2021/95 refers). The primary objective of deferring negotiations is to allow adequate time for Rio Tinto to generate and share material information with the Crown. The Crown's information gaps will naturally reduce over time as:
 - a. Environment Southland's (ES) enhanced monitoring and reporting regime will over time provide more comprehensive and up-to-date information about the environmental state of the site.
 - b. Ngāi Tahu has entered a partnership agreement with Rio Tinto, which will enable it to undertake site visits and further inform understanding of the cultural significance of the site.
4. The Crown's evidence base regarding the site has grown considerably during the course of commercial negotiations and continues to grow. Annex 1 provides an update on ES recent testing activities, and the private new litigation being brought in the Environment Court against NZAS, which ES has joined.
5. The more time that passes, the more opportunity there is for relevant information to be identified and considered by the Crown. With reduced information asymmetries, the Crown can make a better-informed decision about the benefits and costs of entering any potential agreement.
6. It could be that additional information, whether sourced from NZAS or other third parties, highlights additional risks and reduces the desirability of the Crown entering into any agreement, for example, if the site is significantly more polluted than expected. Regulatory and enforcement approaches remain key non-deal, non-financial levers for the Crown.

The preferred option is to defer negotiations until NZAS has completed its full closure study process (expected in 2024)

7. The Crown should only recommence negotiations once Rio Tinto has sufficient information about the state of the site and the information required to make remediation commitments. This approach puts the onus on Rio Tinto to satisfy the Crown's information needs in return for the financial relief that it seeks.

8. The largest amount of such information will be available once NZAS has completed its Closure Study process, which it has confirmed will occur in 2024. Upon completing the Closure Study process, Rio Tinto will have all the information *it* deems necessary to make informed decisions about its remediation activities, and will be best placed to engage and make commitments with the Crown. Deferring negotiations until that point is the preferred option.
9. The longer it takes Rio Tinto to share information, the more time the Crown has to collect information from other sources, and the shorter the period of time over which the Crown provides any potential financial relief.
10. The next best option is for the Crown to recommence negotiations shortly before the smelter ceases to operate, currently scheduled for 31 December 2024. This option would furnish the Crown with the most information, but will provide the least time to negotiate an agreement. If Rio Tinto wishes to keep operating beyond 2024 with Crown support, it should be incentivised to reach an agreement quickly.
11. Other options for recommencing negotiations were considered but determined to be less desirable due to the significant risks to the Crown in entering an agreement with inadequate information:
 - a. *After NZAS has amended and published its revised remediation accounting provision in Q2/Q3 2021.*
 - The Crown has previously requested information about NZAS' existing remediation provision. However, Rio Tinto has declined to provide any material information. Officials assess the likelihood of remediation information being made available and shared at this point to be very unlikely. The Crown is likely to be no better informed as a result of the revised accounting provision.
 - b. *Once NZAS' preliminary outputs from its Closure Study process are shared with the Crown in Q4 2021/Q1 2022.*
 - Rio Tinto has publicly stated that it maintains and periodically updates Closure Plans for all its facilities. Despite repeated requests, Rio Tinto has never provided any detailed information about its Closure Study and has generally taken the position of only providing high-level material instead of the specific and detailed information the Crown requires to make an informed decision.
 - Officials are very circumspect about the scope, quality and degree to which NZAS' preliminary Closure Study outputs will be valuable to the Crown and significantly reduce existing information gaps. The Crown will be best informed once the Closure Study outputs are finalised and shared, and there is no downside for the Crown in waiting.
12. Our commercial advisors note that Rio Tinto may be able to rely on the existence of negotiations to make a stronger case to their accountants and auditors for a lower remediation accounting provision. Rio Tinto may rely on the Crown's previous offers, and Rio Tinto's own proposal which suggests the possibility of a Crown backed pathway to appropriately treat the SCL.
13. Nothing precludes the Crown from recommencing negotiations at any stage, when it assesses it has the information required to make an informed judgment about the value of any potential agreement relative to the environmental state of the site.
14. In communicating the deferral, we propose that Rio Tinto is clearly informed that the Crown will not undermine the integrity of the Transmission Pricing Methodology (TPM).

Anticipated changes to the TPM are currently being finalised, including the Prudent Discount Policy. Engagement with the TPM process remains the appropriate avenue for NZAS to address its transmission charges.

15. The Crown has sought to address the concerns that NZAS has raised around the economic viability of the smelter (with transmission charges making up a portion of NZAS' operating costs) through the financial proposals it has made, while leaving the TPM intact. These financial proposals provided a payment for specific outcomes (such as remediation or economic transition) rather than recognising that NZAS is deserving of regulatory relief on a standalone basis. Officials recommend that a similar approach be taken to other large industrials in a similar position to NZAS.
16. It is uncertain if the smelter will close in 2024. By that time, it is anticipated that transmission infrastructure enhancements will significantly reduce NZAS' bargaining power with Meridian (as Meridian will have access to other customers and will be less inclined to offer a discount to the smelter). This will further strengthen the Crown's negotiating position and may enable the Crown to seek additional commitments from the smelter if any potential agreement.

Communications plan

We recommend proactively informing key stakeholders, prior to informing Rio Tinto of the deferral of negotiations

17. We recommend proactive management of the deferral decision with Rio Tinto. With certainty for the workforce and economy achieved, a proactive stance will enable an evolution of the narrative with the Crown now focusing on environmental concerns and a just transition for the Southland economy.
18. Ngāi Tahu and regional stakeholders have shown support for the Crown's position on site remediation. We propose verbal pre-briefings of key stakeholders prior to the letter being sent to Rio Tinto as follows:
 - a. Minister of Finance informs the Southland Mayoral Forum, including Mayor Tracy Hicks
 - b. Minister of Energy and Resources informs Tā Tipene O'Regan, Ngāi Tahu
 - c. Minister for the Environment informs Environment Southland and Invercargill City Council
19. Public announcement of the deferral of negotiations could occur by press release or at a public event, on sending of the letter to Rio Tinto. We have attached to this briefing the draft letter to Rio Tinto (Annex 2) and talking points for the stakeholder pre-briefings (Annex 3). We can also prepare a press release or provide support for an event, as required.

Table 1: Communications plan summary

Sequence	Action	Indicative date [^]
1	Ministerial decision on period of deferral	22/23-Feb
2	Pre-brief key stakeholders	25/26-Feb
3	Letter to Rio Tinto communicating deferral	26-Feb
	Press release /event informing public of deferral	26-Feb
4	Proactive release of key Crown advice (discussed below)	As soon as possible after deferral decision is communicated

[^] *Dependent on Ministerial availability; based on recommendation to defer negotiations until 2024.*

Several live Official Information Act 1982 (OIA) requests illustrate the public interest in the status of negotiations and we recommend the Crown proactively releases key advice once the deferral is publicised

20. Several large OIA requests have been received by multiple agencies. There is a high level of interest among stakeholders about the negotiations now that acceptance of the Meridian deal is public, as well as interest regarding the just transition for Southland and the state of the smelter site. Proactive release of key advice will enable the Crown to:
- more efficiently manage these interests
 - reduce the burden of responding to individual requests
 - allow agencies to agree a timeline and approach across the several agencies involved, and
 - support understanding of the factors influencing the Crown's position.
21. Our advice is that future negotiation scenarios are not disadvantaged by the Crown proactively releasing key advice once negotiations are deferred (noting commercial and in-confidence material will be withheld, s9(2)(ba)(i) [REDACTED]). There are advantages to proactive release:
- Rio Tinto has undertaken extensive stakeholder management and media advocacy as part of its negotiating strategy. A proactive release will make Crown decision-making transparent and aid understanding of the reasons surrounding the Crown's decisions.
 - A proactive release is considered the best way to avoid any misunderstanding or mischaracterisation of negotiations and positions taken by the respective parties.
22. We consider that the grounds under section 9(2)(j) of the OIA (where release would be prejudicial to negotiations) are no longer a strong justification for withholding information once negotiations are deferred.
23. We also consider that the public interest requires disclosure. Proactive release of key Crown advice will strengthen the accountability of decisions makers, facilitate informed participation in government decision-making and improve public trust and confidence in government.
24. We recommend that the Tiwai Group Ministers similarly consider proactively releasing their key correspondence with Rio Tinto.
25. Once the preferred period to defer negotiations is determined, officials will provide separate advice outlining the key Crown advice to be released, including the specific information that will continue to be withheld, and the reasons why. Officials recommend that this proactive release takes place as soon as practicable after the deferral of negotiations is made public.

Risks and mitigations

26. There is a risk that pre-briefing Ngāi Tahu and key stakeholders results in information about the deferral of negotiations leaking into the public domain prior to Tiwai Group Ministers informing Rio Tinto. This risk is mitigated by the pre-briefing occurring as shortly as possible before Rio Tinto is informed. Alternatively, Ngāi Tahu and key stakeholders could be informed of the deferral of negotiations after Rio Tinto.

27. Rio Tinto's public position is likely to be negative for all negotiating eventualities unless they achieve an agreement that gives NZAS a significant payment on transmission relief. As well as the timing advantage provided by a proactive stance, a potential negative Rio Tinto media strategy is mitigated by the communications plan contained in this advice, including pre-briefing key stakeholders and ensuring a prompt proactive release of key advice to inform the public narrative. While Rio Tinto may characterise Ministers as walking away from the negotiations, stakeholders, media and the public will have full visibility of the rationale for the Crown's deferral of negotiations.

Crown work continues while negotiations are deferred

The Crown is continuing to engage with NZAS' Closure Study processes through MBIE and MFE

28. Rio Tinto has initiated two closure related activities:
- a. A Closure Study, with preliminary and final outputs; and
 - b. A site repurposing working group.
29. The Closure Study is investigating how best to cease operations "to make Tiwai safe and stable and preserve optionality for future use". The study focuses on the environmental impacts, pollution and decontamination of the site. Shaun Lewis, Director, Waste and Resource Efficiency, MFE, is the lead Crown representative in this process.
30. Rio Tinto has also convened a repurposing working group whose objective is to coordinate views about how best to transition the site and available assets into appropriate future uses, taking account of stakeholders' aspirations and regional and national policy goals. Rio Tinto estimates it will require one to three years to establish the working group, identify a regional plan and engage with stakeholders, and then a further three to five years to develop and implement options. Jason Tibble, Regional Public Service Lead, MSD and Shane Wilson, Manager, Just Transition Partnerships, MBIE, are the lead Crown representatives in this process. These Crown representatives are coordinating a wider government response regarding support for the region's Just Transition and the Murihiku regeneration plan.

Just Transitions planning for the Southland region is progressing

31. The Just Transitions unit at MBIE was set up to help share and coordinate the work on transitioning New Zealand to a low emission economy. The work takes a system approach to partner with a diverse range of stakeholders in considering a broad range of economic, social, environmental and cultural factors, working across many portfolios and departments.
32. A cohesive and inclusive approach from Government is critical for Just Transition partnerships to succeed. To achieve this, the Just Transitions work is looking to build local capability and capacity, ensure iwi/Maori are involved from the onset, support strategic planning, ensure a broad range of stakeholder participation and broker system leadership, effective coordination and shared objectives.
33. The Just Transitions unit at MBIE will provide responsible Ministers and local stakeholders with advice on policy and strategy relating to regional economic development in Southland.

Governance considerations

34. The Crown was very exposed to the exit of NZAS in 2020, in terms of its impact on Southland, the potential effect on transmission charges, and the lack of certainty regarding site remediation. The extended closure provides four more years to progress a series of non-deal levers that can help reduce NZAS' leverage, including by:
- a. Developing options to encourage diversification of the local economy
 - b. Completing and implementing the Transmission Pricing Methodology (TPM) review
 - c. Strengthening remediation obligations and clarifying the liability regime for hazardous waste and contaminated land
35. Ngāi Tahu have strong aspirations and expectations for the site, including enduring regeneration and governance.

Light-touch governance, using existing arrangements, will ensure the Crown's actions remain coordinated as it progresses its non-deal levers

36. Existing agency line management structures will directly coordinate and oversee the key work streams that will progress during the deferral of negotiations:
- Just Transitions – MBIE
 - Remediation – MFE
 - Site monitoring – ES
 - Energy Policy – MBIE
 - Regional Public Service Lead – MSD
 - Negotiations (deferred) – Treasury
37. In addition, we recommend that a governance structure, preferably already in existence, coordinates the Crown's approach across agencies and work-streams.

The Murihiku Chief Executive's Group is an existing governance arrangement that could provide oversight to this programme of work

38. Government is organising itself at the central and regional level around the Murihiku regeneration plan and governance structure, developed by the four Murihiku Papatipu Rūnanga.
39. The Chief Executive (CE) of the Ministry of Social Development (MSD) has formed the Murihiku CE's Group, comprising leaders of MBIE, TPK, DoC, MoE, TEC, MfE and the Treasury. This group regularly engages with Murihiku Regeneration leadership and supports community led work on the Murihiku Regeneration plan.
40. We recommend that the Murihiku Chief Executive's Group is made accountable for enduring and effective Crown governance arrangements to support and coordinate the Crown's ongoing work, the Murihiku Regeneration Plan and wider Southland community goals.
41. This approach provides a further opportunity for the Crown to effectively partner with Iwi in the Southland transition. It will also help to meet Iwi and community expectations for an effective single point of contact for stakeholders and provide reassurance that the Crown remains engaged with the environmental and economic challenges faced by Southland.

Next steps

42. Once the preferred period to defer negotiations is decided, officials will prepare a Treasury Report to enable the swift proactive release of key Crown advice.
43. The Crown negotiating team will defer its next scheduled interactions with Rio Tinto until Ministers have made and communicated their decision regarding the duration of the deferral of negotiations to Rio Tinto.
44. The Project 14 Steering Group which oversees the Crown's commercial negotiations will have its last meeting on 26 February 2021.

Annex 1: Updates since last advice

1. Since the Tiwai Group Ministers (Ministers of Finance, Energy and Resources, and for the Environment) decided to defer negotiations with Rio Tinto (T2021/95 refers), officials have become aware that:
 - a. Private litigation has been launched against New Zealand Aluminium Smelters Limited (NZAS) seeking first containment, and then removal of the Spent Cathode Lining (SCL) currently stored at the SCL pad at the Tiwai Peninsula (i.e. not including SCL currently stored in warehouses/sheds at the smelter)
 - b. Environment Southland (ES) has lodged as an interested party to the litigation,
s9(2)(ba)(i)

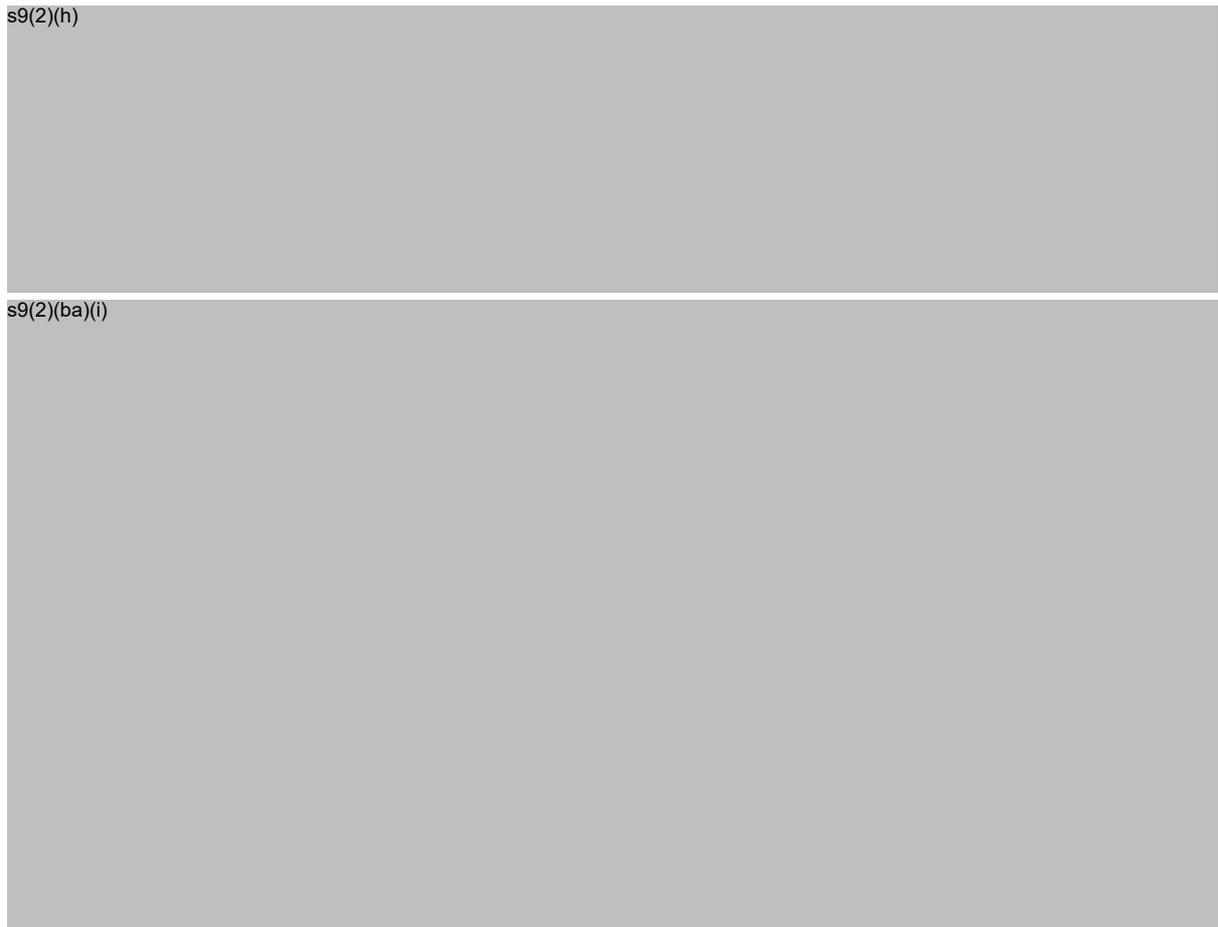


Private litigation has been launched against NZAS regarding the SCL stored at the SCL pad

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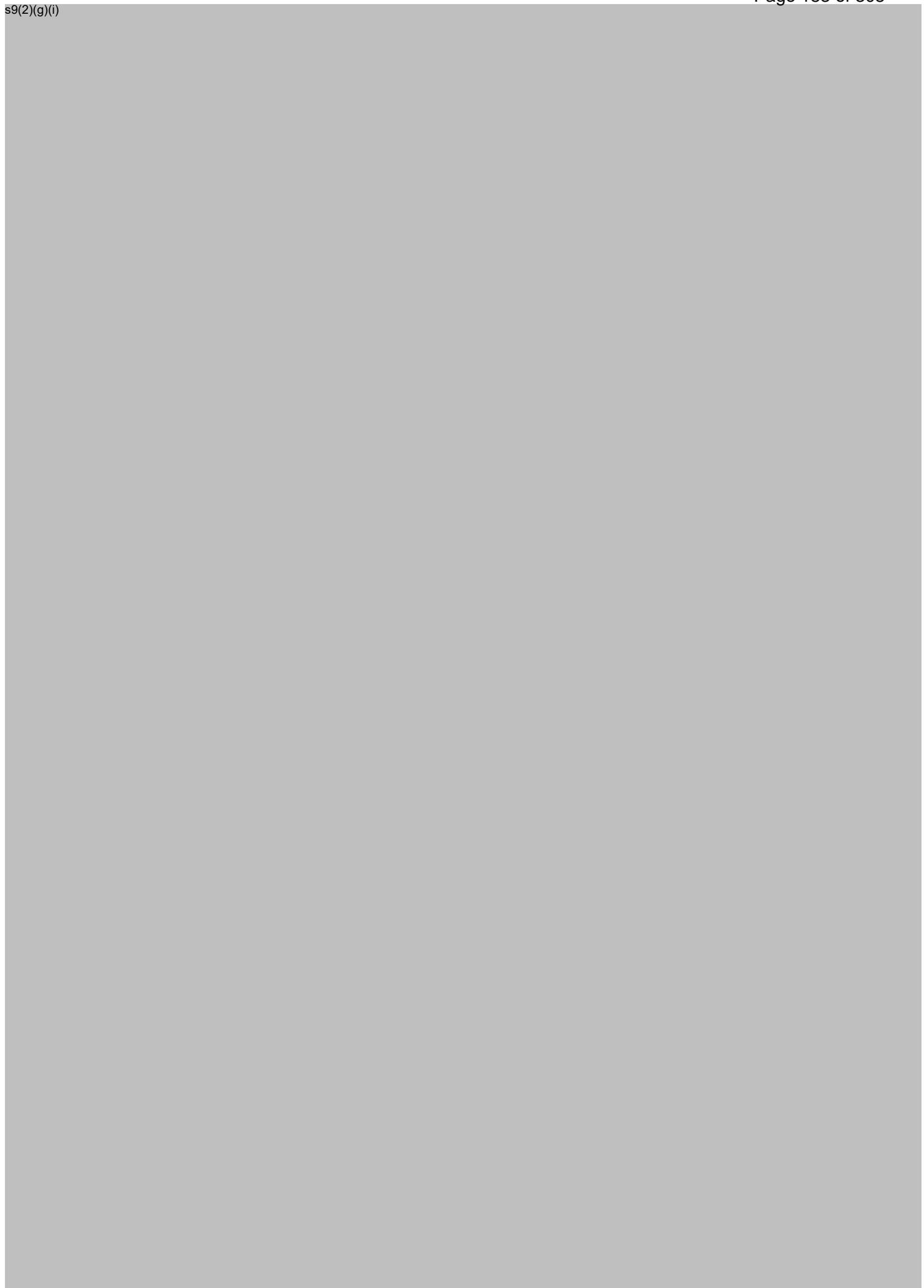


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s9(2)(g)(i)



s9(2)(g)(i)



Annex 3: Talking points for stakeholder pre-briefings

- I am about to share with Rio Tinto and the minority shareholder of the New Zealand Aluminium Smelters (NZAS), Sumitomo Chemical Ltd, that the Crown has formally deferred consideration of any negotiations in respect of the Tiwai Point Aluminium Smelter.
- We are informing Ngāi Tahu and regional stakeholders to make them aware of this decision to focus on achieving the environmental remediation we believe the region deserves and to achieve a just transition for the workforce and broader economy.
- Delayed closure of Tiwai Point has been achieved with Rio Tinto's announcement last month (Jan) of the site remaining open until the end of 2024.
- We thank Rio Tinto for having brought certainty to the workforce and the region.
- This means the Crown can now focus on a regionally-led just transition to support Southland jobs both now and in the future.
- During the next four years, and with the help of Ngāi Tahu and regional stakeholders, we must use this time wisely in partnership with Southlanders to mitigate any negative impacts of Rio Tinto's closure in 2024 and ultimately focus on the opportunities to repurpose the site or its strategic assets and grow the region's economy for Southland's people.
- So this is about us achieving with some clarity a focus on this next phase of work.
- We are also now focused on achieving remediation for the site, and with this in mind have deferred negotiation with Rio Tinto until we are both in a better position to know exactly what we are dealing with.
- A significant factor in this decision is that Rio Tinto have not provided substantive environmental remediation commitments, beyond process commitments which, while useful, do not determine outcomes and therefore provide very limited comfort to the Crown.
- Our officials have also been unable to access any detailed information from Rio Tinto or Sumitomo as to the condition of the site, and we have not been able to progress access for environmental experts to assess what works are needed.
- While this leaves us with some uncertainty, what we know is there's stockpiles of spent cathode lining, a landfill and both above and below ground infrastructure.
- There are a range of toxic materials (including cyanide, heavy metals and asbestos), and the low-lying nature of the site and sandy coastline present risks.
- It is critically important however that appropriate remediation commitments are in place, to ensure the site is returned to the standard New Zealand expects and Southlanders deserve.
- We will continue to seek commitment from NZAS owner Rio Tinto and its minority shareholder Sumitomo Chemical that serious environmental concerns related to decades of aluminium smelting operations at Tiwai Point must be addressed.
- We understand there is a significant volume of hazardous waste and contamination at the Tiwai Point site and after closure there's going to be a need to manage the risks to human health and the environment.

- The Murihki Chief Executive's Group, convened by the Ministry of Social Development, will provide oversight of the Crown's remediation and regional economic development activities while the negotiations are deferred. I encourage you to engage with this forum.
- The smelter's continued operations until 2024 is a great outcome for everyone, and it provides us with the valuable opportunity to ensure that Southland is well prepared for the smelter's eventual departure.



TE TAI ŌHANGA
THE TREASURY

Treasury Report: Potential Economic Impacts of High Wholesale Electricity Prices

Date:	23 April 2021	Report No:	T2021/1026
		File Number:	SH-11-5-1-1

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	<p>Agree to meet with the Minister of Energy and Resources, and officials at the Treasury and the Ministry of Business, Innovation and Employment in early May 2021 to discuss the ongoing issues in the wholesale electricity market.</p> <p>Refer this report to the Minister of Energy and Resources.</p>	23 April 2021

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
George Wibberley	Senior Analyst, Transitions Regions and Economic Development	s9(2)(k)	N/A (mob) ✓
Jean Le Roux	Manager, Transitions Regions and Economic Development		N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury.

Refer a copy of this briefing to the Minister of Energy and Resources.

Note any feedback on the quality of the report

Enclosure: No

Treasury Report: Potential Economic Impacts of High Wholesale Electricity Prices

Executive Summary

Wholesale electricity prices have been higher than average since the beginning of 2021, due primarily to constrained gas supply and low hydro inflows.

Thermal electricity generators, such as Contact and Nova, are currently building gas storage volumes to help meet demand over winter. This places them in competition with major gas users for gas supply. As such, the issues with gas supply and electricity prices are highly linked.

In the short term, most consumers are unlikely to experience a significant increase in their electricity bills, as only a very small proportion of households are on spot price exposed contracts (0.5% of household consumers).

The majority of small and medium enterprises (SMEs) are not directly exposed to high wholesale prices. However, SMEs who are re-contracting new 2-3 year electricity contracts are experiencing much higher contracted prices.

Some large commercial and industrial consumers, especially those that are grid connected, are likely to be more exposed. There have been several recent decisions that are at least partly attributed to high wholesale electricity prices or constrained gas supply:

- Methanex has responded to the current gas supply shortage by mothballing its Waitara Valley Plant, with the loss of an estimated 75 jobs. (February 2021)
- Whakatāne Mill, a paper and packaging product manufacturer, has confirmed that it will close at the end of June 2021, with high energy costs being one contributing factor. 210 job losses are expected. (March 2021)
- NZ Steel has reportedly shut down parts of its operations for temporary periods due to unaffordable wholesale electricity prices. (April 2021)
- Norske Skog's Tasman Mill, which produces paper and pulp, are operating at reduced capacity to curb their exposure to current spot prices. (April 2021)

Given the size of these firms, it is possible that there will be flow on impacts for regional economies and employment. The potential implications for steel customers are particularly notable, as there is a global steel shortage. Any reduction in NZ Steel production is therefore likely to increase costs for the building, infrastructure and manufacturing sectors.

Over the medium to long term, spot prices are likely to remain high until there is significant rain that will increase hydro storage, but there is a low risk of storage reaching the emergency level.

The longer term economic impacts are harder to predict. If wholesale prices revert to long-term averages, it is unlikely there will be significant long-term impacts for most household consumers.

However, if dry weather continues or worsens and wholesale prices remain high, then it is possible that retailers will seek to recover costs from consumers. There may be impacts to retail pricing in the future, but the significant retail competition in the electricity sector may help to guard consumers against large price increases.

Recommended Action

We recommend that you:

- a **note** the contents of this briefing, which outlines some potential impacts of recent high wholesale electricity prices on the economy;
- b **note** that the Ministry of Business, Innovation and Employment and the Electricity Authority are preparing further advice for the Minister of Energy and Resources on wholesale prices and electricity futures prices up to 3 years out, which is expected in early May 2021;
- c **agree** to meet with the Minister of Energy and Resources, and officials at the Treasury and the Ministry of Business, Innovation and Employment, in early May 2021 to discuss the ongoing issues in the wholesale electricity market; and

Agree/disagree.

- d **refer** this report to the Minister of Energy and Resources.

Refer/not referred.

Jean Le Roux
Manager, Transitions Regions and Economic Development



Hon Grant Robertson
Minister of Finance

27 / 04 / 2021

Treasury Report: Potential Economic Impacts of High Wholesale Electricity Prices

Purpose

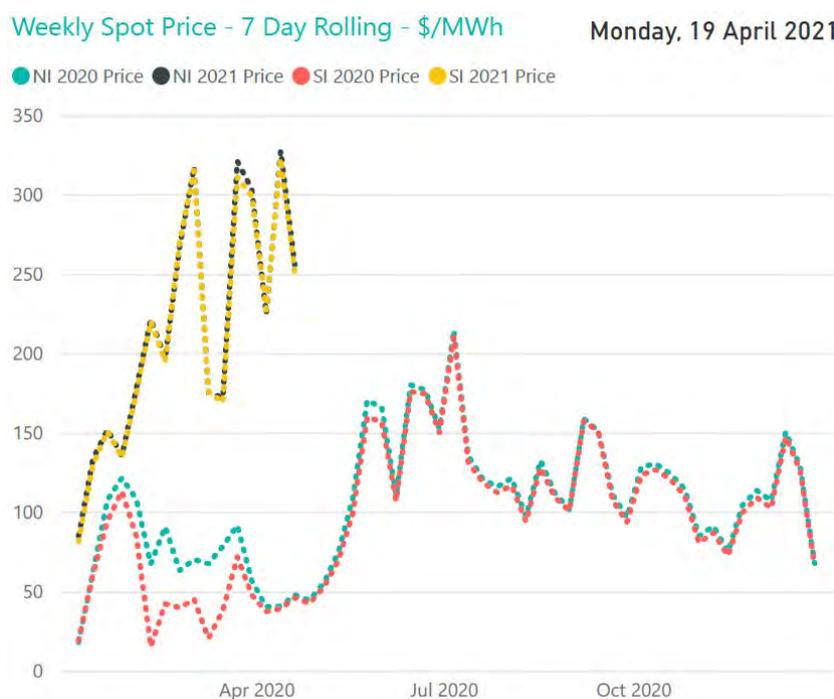
1. This report provides an overview of some of the potential impacts of recent high wholesale electricity prices on the economy, in response to your request for further advice on this issue.
2. The report covers: background information on recent wholesale electricity prices; short term economic impacts on consumers; short term economic impacts on firms; potential long term economic impacts; and next steps including future advice to Ministers.

Background

Wholesale electricity prices have been significantly higher than average since the beginning of 2021, primarily due to scarce gas supply and low hydro inflows.

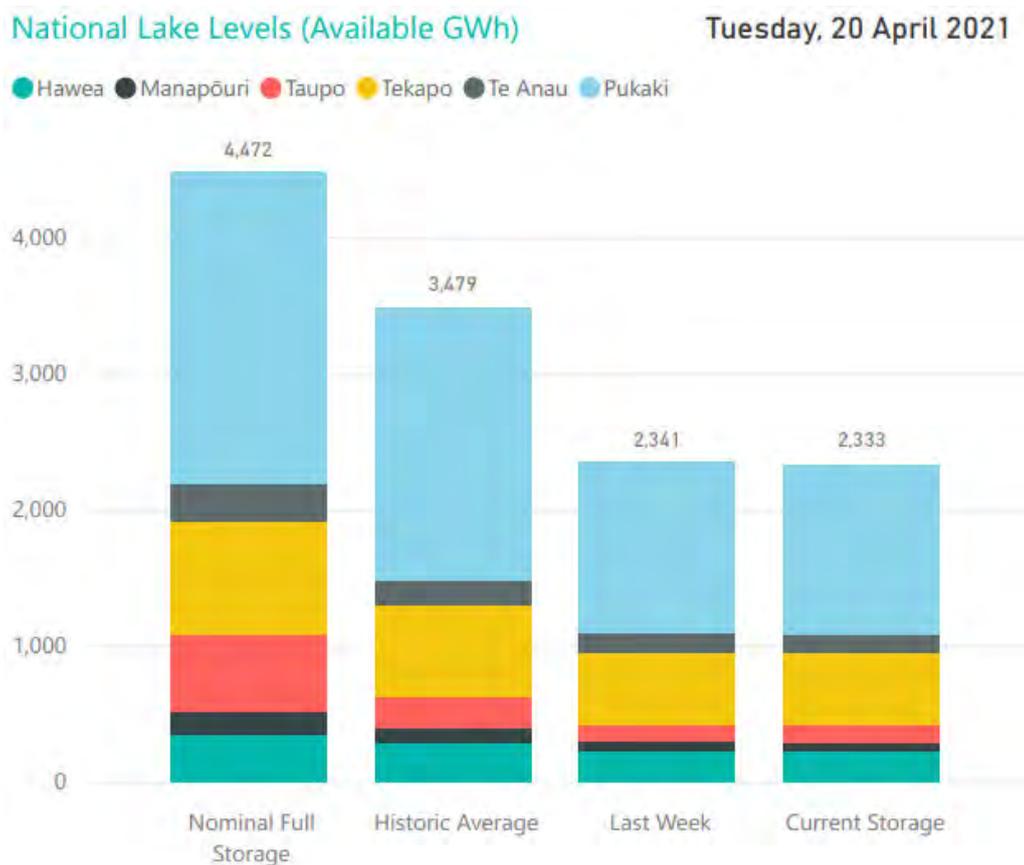
3. February and March 2021 had average prices of \$241/MWh and \$250/MWh respectively. These prices compare with annual averages of \$118/MWh for 2019 and \$105/MWh for 2020, and peak monthly averages of \$294/MWh for October 2018 (during the Pohokura outage) and \$309/MWh for June 2008 (during a dry year).
4. Electricity retailers purchase wholesale electricity from generators at spot prices, which reflect the price of wholesale electricity every half-hour. Recent wholesale electricity spot prices have, at times, been averaging over \$300/MWh per day, with several spikes over \$600/MWh. Some price spikes were sustained for several hours.
5. Figure 1 shows that wholesale prices for both the North Island and South Island were significantly higher for the first quarter of this year compared to the same period in 2020.

Figure 1: Weekly wholesale electricity spot prices (source: Transpower)



6. Current wholesale prices are higher than normal due to a confluence of four unusual factors: constrained gas supply; low rainfall reducing inflows into hydro storage lakes; higher carbon prices; and low wind generation.
7. Generators tend to conserve water in years of low lake inflows as they anticipate an increase in demand for electricity during winter. As a result, they tend to increase the amount of thermal generation, which is more expensive. This means that wholesale electricity prices usually respond more strongly to low hydro storage at this time of the year (prior to winter).
8. Gas supply is currently constrained in New Zealand, particularly as production from the Pohokura gas field is slowly reducing. Thermal electricity generators, such as Contact and Nova, are currently building gas storage volumes to help meet demand over winter. This places them in competition with major gas users for gas supply. As such, the issues with gas supply and electricity prices are highly linked.
9. Transpower indicated that national storage was at 67% of the historic average for this time of year in its most recent security of supply report on 22 April 2021.

Figure 2: Hydro lake storage capacity (source: Transpower)



10. The Ministry of Business, Innovation and Employment (MBIE) and the Electricity Authority have been providing regular briefings to the Minister of Energy and Resources on the wholesale market (BR-21-0010 and BR-21-0017 refer).

Impacts on consumers

11. High wholesale electricity prices could be directly passed through to consumers in the form of higher electricity bills, which may lead to an increase in Consumer Price Index inflation. Firms that are experiencing high wholesale electricity prices may also decide to increase their own prices in order to maintain profits.
12. It is not certain that high wholesale prices will feed through to higher consumer prices. The extent of these impacts will depend on the level and duration of the increase in wholesale prices, the contract types and level of exposure of consumers and firms and the level of competition in the electricity sector.
13. Retail electricity prices are only a relatively small component of the Consumer Price Index (CPI), the main measure of inflation. The weighting of consumers' expenditure on electricity is 3.2% in the CPI. This means that a 10% increase in retail electricity prices would only result in a direct increase in inflation of around 0.3 percentage points.
14. It is worth noting that housing and related costs, such as electricity bills, make up a larger proportion of lower income households' expenditure. As a result, low income households are likely to be disproportionately impacted by an increase in retail electricity prices.

In the short term, most consumers are unlikely to experience a significant increase in their electricity bills.

15. The wholesale electricity price typically comprises just 32% of a residential consumer's energy bill. As such, retail electricity prices may not necessarily adjust in proportion to changes in wholesale electricity prices.
16. Figures provided by the Electricity Authority indicate that 74.2% of household connections are on an open contract, 23.6% are on fixed price and term contracts and the remainder are on prepaid or spot-price exposed contracts [BR-21-0017 refers].
17. The small proportion of households on spot price exposed contracts (0.5% of households) are particularly exposed to high wholesale prices.
18. Households on open contracts are somewhat protected from higher prices – while their contracts are reviewed more frequently, they are able to switch providers with no break costs.
19. Households on fixed price and term contracts are generally protected from high wholesale prices and, should wholesale prices return to normal levels this year, they are unlikely to be affected by current spot prices. If wholesale prices remain high for an extended period of time, retailers may incorporate this cost into their prices for future years.
20. Prepaid contracts provide fixed prices, with no fixed time frame. This type of contract is concentrated among lower income households and these consumers may have limited ability to switch contracts due to poor credit history.

Impacts for SMEs and large industrial firms

21. SMEs and larger industrial firms that are particularly exposed to high wholesale electricity prices could have to reduce or cease production. If this occurred, it could lead to direct job losses and reductions in economic activity and potential flow on impacts throughout the supply chain.

The majority of SMEs are not directly exposed to high wholesale prices, but some large commercial and industrial consumers have significant exposure.

22. The material from paragraphs 23 to 25 contains information which is Commercial In-Confidence and, if released, could have material impacts on firms. It is based on Electricity Authority modelling of the number of firms that are likely to be most exposed to recent high wholesale electricity prices (BR-21-0017 refers).
23. Only 0.9% of SMEs are directly exposed to high wholesale prices through spot price exposed contracts. However, MBIE has reported that discussions with electricity market stakeholders indicate that some SMEs are experiencing a price 'shock' when they renegotiate new 2-3 year contracts. The number of SMEs impacted in this way is not known at this stage.
24. Large commercial and industrial consumers that are connected to distribution networks are more exposed, with 21% having spot exposed contracts (11,581 connections). This group represents around 5% of total annual demand by all consumers. The Electricity Authority estimates that approximately 35% of the volume sold through retail spot contracts is hedged externally, so some consumers in this group may be partially protected against high wholesale prices.
25. The largest grid-connected industrial consumers are likely to be most exposed to high wholesale prices. Electricity Authority modelling of eight grid-connected consumers¹ shows that approximately 60% of this group's electricity demand volume is exposed to wholesale spot prices. The level of spot exposure has increased significantly since July 2020, when only 40% of the group's electricity demand volume was spot price exposed. It is unclear what has driven this change in behaviour, but as a result these large industrials are potentially more exposed to recent high prices.

Several large industrial firms have reported short term impacts of high wholesale electricity prices and constrained gas supply, most notably Methanex, NZ Steel and several firms in the pulp and paper product manufacturing sector.

26. The following sections provide further detail on large industrial electricity consumers that might be impacted. This assessment is not exhaustive and is based on limited publicly available data.

Methanex New Zealand Limited (Methanex)

27. Methanex produces methanol from natural gas and consumes around 40% of New Zealand's gas supply. Methanex has three plants in New Zealand; two at Motunui and one at Waitara Valley.
28. Methanex has a significant impact on Taranaki's regional economy. According to an economic impact report commissioned by Methanex in 2018, the company generates \$634 million for Taranaki's GDP and \$834 million for New Zealand annually. This represents approximately 10% of Taranaki's total output. Methanex directly employs 270 staff when producing at capacity and supports an estimated 3,171 jobs indirectly.
29. Historically, Methanex has provided flexibility by reducing its demand when natural gas is constrained. Methanex has already responded to the current gas supply shortage by mothballing its Waitara Valley Plant. This was announced in February 2021 and will lead to the loss of an estimated 75 jobs.
30. Methanex announced in 2018 that it had agreed gas supply contracts to cover "more than half" of its New Zealand operations through to 2029. Given these long term contracts, there is uncertainty over the extent to which Methanex will further reduce production to respond to market conditions. Currently, its two production plants at Motunui will continue to operate, but it is undertaking an organisational review.

¹ This group are responsible for around 5.4% of total annual demand by all consumers. The group excludes New Zealand Aluminium Smelters Limited (NZAS).

31. Several factors are likely to be important in determining Methanex's future production levels, including international demand for Methanol, gas production and carbon prices. Any further reduction in production would likely lead to further job losses and reductions in economic output for Taranaki as well as flow on impacts for the gas production sector in New Zealand.

New Zealand Steel (NZ Steel)

32. NZ Steel operates the Glenbrook Steel mill near Auckland. It is a major consumer of electricity with consumption of 440GWh annually from the grid. This is approximately 1.1% of New Zealand's total electricity demand.
33. According to NZ Steel's own data, it contributes more than \$600 million annually to the New Zealand economy and directly employs 1,400 people, whilst supporting a further 2,500 people indirectly through the supply chain.
34. NZ Steel appears particularly exposed to high wholesale prices. On 1 March 2021, it sent a letter to the Minister of Energy and Resources detailing the "unsustainable spike in electricity prices" that the company is facing. In the last month, some of NZ Steel's operations have temporarily shut down due to unaffordable wholesale electricity prices.
35. The company is currently reviewing its operations in New Zealand. It has recently exited pipe and hollows steel production and will cease producing cold-rolled annealed products in April 2021.
36. If high wholesale prices continue, it is likely that there will be further temporary production pauses and the company may permanently scale down elements of its operations. This could cause direct job losses.
37. This would also have impacts on the wider economy, particularly as there is a global shortage of steel due to increased global infrastructure spending in response to COVID-19. A reduction in NZ Steel production would mean that New Zealand firms would have to import greater quantities of steel. Where steel is available for import, the current lead-in time is estimated to be over eight months, compared to the previous lead-in time of approximately eight weeks.
38. As such, if NZ Steel scales down production, this would likely cause increased costs and delays for the building, infrastructure and manufacturing sectors. Furthermore, the increased reliance on imports would represent a loss of value for New Zealand. NZ Steel estimates that \$80 of every \$100 spent on local steel stays in the New Zealand economy, compared to only \$5 for imported steel.

Pulp and paper plants

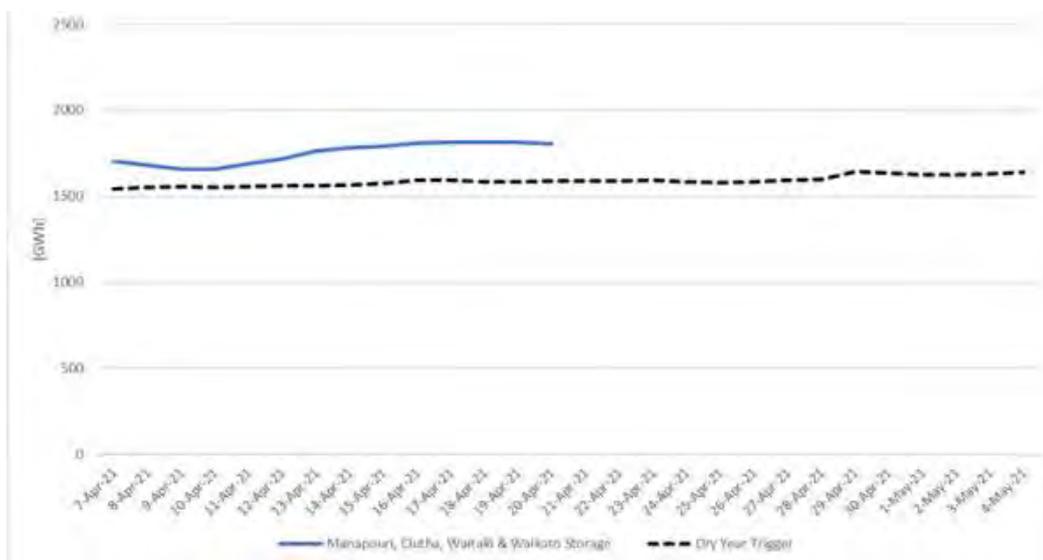
39. The pulp and paper sector appears to be particularly exposed to high wholesale electricity prices and gas supply issues:
- Whakatāne Mill, which has produced paper and packaging products for the last 80 years, confirmed that it would close at the end of June 2021, though negotiations with potential buyers are reportedly ongoing. High energy costs have been cited as a contributing factor to the mill's closure, although the trigger was the mill's main customer switching to an alternative supplier. The mill employs 210 staff who are all expected to lose their jobs.

- Norske Skog's Tasman Mill in Kawerau usually accounts for about 1% of New Zealand's electricity demand. The plant currently employs 156 staff. The plant is currently under strategic review, due to be completed in early 2021. They have stated that current power prices are "problematic" for their business and are operating at reduced capacity to curb their exposure to current spot prices.
 - Oji Fibre Solutions have three mills (in Kawerau, Penrose and Tokoroa) which produce pulp and paper products. The company met with the Minister of Energy and Resources and have raised the issue of constrained gas supply and high prices.
40. There is the potential for direct job losses and the loss of regional economic activity, particularly in the Bay of Plenty, if the Whakatāne Mill closes as expected and there is continued reduced production at other mills. As these issues appear to be affecting several businesses in the sector, there might be broader economic implications, particularly for local retail customers who purchase the packaging. There may also be impacts for other local mills and wood processors that provide raw materials and share overheads.
41. It is worth noting that the wider wood processing and manufacturing sector is struggling to remain internationally competitive for several reasons which go beyond just energy prices. For example, the majority of New Zealand's raw logs are exported, which means that many sawmills struggle to maintain a consistent supply of affordable logs. This can cause further problems in the supply chain, including in pulp and paper plants.

New Zealand Aluminium Smelter (NZAS)

42. NZAS is the single largest consumer of electricity in New Zealand. It uses about 13% cent of total electricity demand.
43. NZAS is less directly exposed to high wholesale electricity prices, as it has a hedging arrangement under its electricity supply agreement with Meridian Energy Limited (MEL). NZAS reached a deal with MEL in January 2021, under which NZAS will continue operations until the end of 2024 with electricity supplied at a set price proportional to NZAS' electricity consumption.
44. Under the contract, MEL can require a Smelter Demand Response (SDR) when the relevant hydro storage is less than the Dry Year Trigger Level. If MEL gives NZAS an SDR notice, NZAS must start to reduce electricity consumption to achieve a reduction in electricity consumption of 250GWh over the period of 130 days.
45. Figure 3 shows that the difference between current hydro storage and the Dry Year Trigger Level has increased slightly over the past two weeks, although an SDR event is still possible if dry conditions continue.

Figure 3: Hydro Storage Versus Dry Year Trigger Threshold (20 April 2021)
(Source: Meridian Energy Limited)



Refining NZ

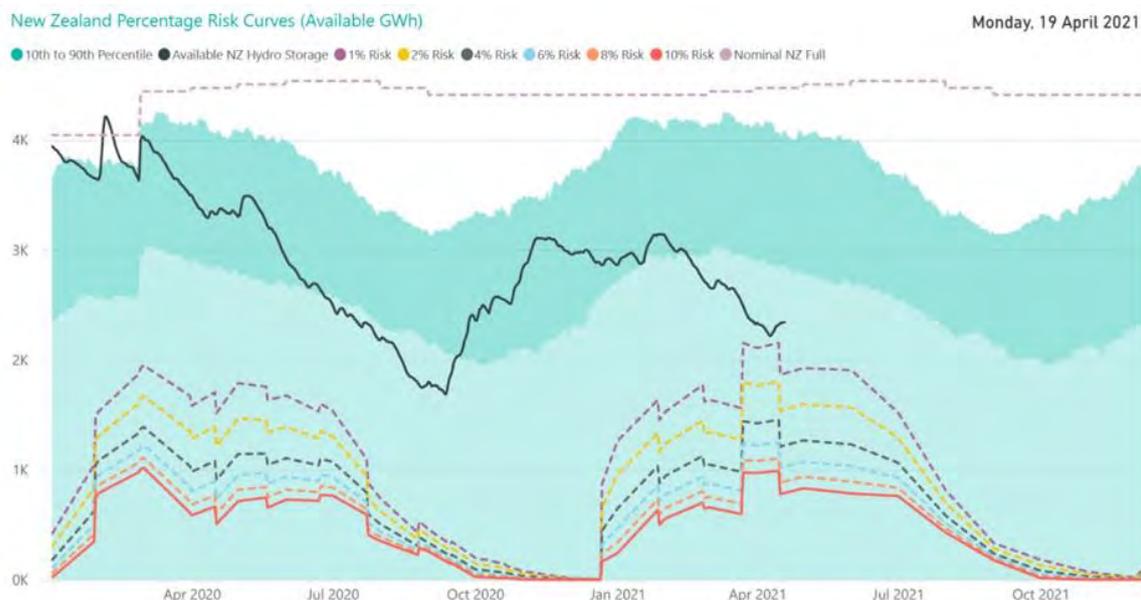
46. Refining NZ operates the Marsden Point oil refinery. It consumes approximately 341GWh of electricity annually from the grid. This is approximately 0.9% of New Zealand's total electricity demand. Refining NZ employs around 300 employees directly and has previously been assessed as contributing about 7% of Northland's GDP.
47. In February 2021, Refining NZ reported that operating costs were down significantly in the 2020 financial year compared to 2019, with savings achieved in electricity costs. However, the company posted a significant net loss after tax of \$198.3 million for the 2020 financial year. This was primarily due to the impacts of low profit margins and demand in the wake of COVID-19. The company cut 90 jobs in December 2020.
48. Refining NZ is currently undertaking a strategic review, with one of the primary options being to convert the oil refinery to an import terminal. Such a change in operation would reduce the refinery's electricity consumption by an estimated 85%.
49. It is unclear whether Refining NZ is particularly exposed to high wholesale electricity prices, as there have been no public statements on this issue specifically.
50. Despite this, it is likely that sustained high wholesale prices would increase the relative costs of maintaining current operations, compared to the option of switching to an import terminal with significantly lower electricity requirements and costs.
51. MBIE has assessed that a terminal operation would likely employ less than 20% of the current 300 employees, with a different mix of skill sets. If Refining NZ decides to convert to a terminal operation, it is likely there would be a significant reduction in jobs and economic activity in Northland.

Potential long term impacts

Spot prices are likely to remain high until there is significant rain that will increase hydro storage, but there is a low risk of storage reaching the emergency level.

52. Future hydro storage scenarios are often described in terms of percentage risk curves, which are produced by Transpower as a measure of the probability that current hydro storage will be insufficient to meet electricity demand.
53. Figure 4 shows that current hydro storage is above the 1% risk threshold, which means that there is a less than 1% probability than current hydro storage will be insufficient to meet electricity demand.

Figure 4: New Zealand Electricity Storage Percentage Risk Curves (Source: Transpower)



54. Should national storage levels reach the emergency level (10% probability that hydro storage is not sufficient to meet demand), an Official Conservation Campaign (OCC) would commence. This requires retailers to pay qualifying consumers \$10.50 per week and would see generator-retailers paying consumers approximately \$18.9 million per week.
55. MBIE considers that, while the risk of storage reaching the emergency level is higher in 2021 than in a normal hydrological year, the risk is still low.
56. However, even if hydro storage levels improve to normal levels, there may still be uncertainty over future gas supply. If this risk, both real and perceived, continues to be assessed as significant by market traders, then prices may remain elevated above previous years.

The longer term impacts are harder to predict, but there is high competition in the electricity retail sector which could protect consumers from significant price increases.

57. Assuming that wholesale prices revert to long-term averages, there are unlikely to be significant long-term impacts for most household consumers. Consumers on spot price-linked contracts will continue to be exposed to high wholesale prices.

58. However, if dry weather continues or worsens, it is possible that retailers will seek to recover costs from consumers. This may affect retail pricing in the future. Industrial electricity users may also reduce production to curb their exposure to continuing high wholesale prices.
59. The extent to which high wholesale prices will feed through to higher retail prices in the long run is uncertain. Retailers are more likely to be able to absorb high wholesale prices in the short run without passing through price increases to consumers. Over time, sustained high wholesale prices may put upward pressure on retail prices, but there is significant retail competition in the electricity market which could dampen potential price increases.
60. There are also a number of other components that make up consumers' final bills. For example, consumer bills also incorporate network and distribution costs and any reduction in these elements would offset an increase in the wholesale electricity component.

Next steps

61. MBIE and the Electricity Authority are preparing further advice for the Minister of Energy and Resources on wholesale spot prices and futures prices up to 3 years out. The advice will also provide a more detailed analysis of the impacts on large industrial firms. This advice is expected in early May 2021 and we have requested that MBIE also forward the advice to you.
62. Following this, we recommend a joint meeting between you, the Minister of Energy and Resources and officials from the Treasury and MBIE to discuss the advice.
63. MBIE is leading the establishment of a Security of Supply Response Team (SSRT). This will be made up of members from the Electricity Authority, Transpower and the Gas Industry Company. The SSRT is being established to plan for a dry-year event. The group will be responsible for providing timely and consistent information and advice to Ministers.
64. Subject to near term storage trajectories, DPMC may establish an inter-agency working group including MBIE, Treasury and DPMC in early May 2021. The group will be used for information-sharing, but could move to a more active state if the risk escalates.
65. MBIE and the Electricity Authority will be producing weekly situation reports for Cabinet, with the first report due on 3 May 2021.



Reference: T2021/1094 SH-11-5-1-4

Date: 29 April 2021

To: Minister of Finance (Hon Grant Robertson)
Minister of Energy and Resources (Hon Dr Megan Woods)
Minister for the Environment (Hon David Parker)

Deadline: 5pm Thursday 6 May 2021

Aide Memoire: Meeting with Rio Tinto on 6 May 2021

You are meeting with Ivan Vella, the new Chief Executive of Rio Tinto's Aluminium product group, on 6 May 2021 at 5-5.30pm. Jennifer Nolan, the Director of External Relations for New Zealand Aluminium Smelters Limited (NZAS), will also attend.

You previously met with Ivan Vella virtually on 1 April 2021. During this meeting, Ivan committed to:

- providing the Government with monitoring and sampling information on the environmental condition of the site,
- closing the smelter in a responsible and sustainable manner, meeting international closure standards, and
- removing all spent cell linings (SCL)¹ from the site to be recycled, or disposed of safely.

These commitments were also made in a letter from Ivan to you on 31 March 2021 and have subsequently been communicated widely via the media in New Zealand. The commitment to remove and appropriately address the SCL is an important step for Rio Tinto in taking responsibility for the environmental consequences of its smelting operation. This represents some progress for the Crown, as Rio Tinto was unwilling to make this commitment during negotiations. However, Rio Tinto has not yet provided detailed information on how or when the SCL will be removed and disposed of.

Rio Tinto related developments

NZAS has increased its estimate of the amount of SCL currently stored onsite by 36,000 tonnes

As part of Rio Tinto's financial reporting obligations, NZAS' auditors have surveyed the exact amount of SCL currently stored at Tiwai Point. NZAS has now increased its estimates of the quantity of SCL to 217,000 tonnes, an approximately 20% increase from the previous public figure of 181,000 tonnes. NZAS have stated this adjustment will not have a material impact on the timeline for full removal of the SCL, which remains unknown. Around 58,000 tonnes have been exported over the past decade to

¹ SCL are the concrete linings of the smelter pits that degrade and are replaced, which are highly contaminated.

end users overseas, and NZAS have said they are exploring options to increase this rate. The Ministry for the Environment (MfE) remains committed to working with NZAS to advance the safe removal of the SCL.

NZAS has publicly released some information about its sampling plan and previous groundwater assessments which Environment Southland is considering

NZAS has recently released a set of three reports, including its preliminary sampling plan to assess the contamination status of the NZAS site. This report indicates the 238 sites NZAS is sampling for its closure study, but does not contain sampling results. NZAS has previously advised it is expecting initial results in May 2021, which it will then verify. The results are expected to be shared with the Crown around the end of May. MfE remains interested in having soil samples from under the pot lines tested, which is not included in NZAS' sampling plan due to the hazards present while the smelter is operating. The report also indicates that some sampling bores have succumbed to coastal erosion. The other two reports related to groundwater assessments near the landfill and the SCL storage facilities.

s9(2)(ba)(i)

Aurecon was the author of the Crown commissioned desk-based study of the level of contamination at the Tiwai site and produced the cost estimates for remediation. Aurecon is reviewing the NZAS sampling programme and using it to help ES develop its own monitoring programme to enable ES to make its own assessment on the state of the site.

The Treasury's initial assessment of the information released by NZAS does not support re-engagement with Rio Tinto regarding Crown support

The information released by NZAS relates to its impact on the smelter site and surrounding environment and is standard information that NZAS would be expected to collect and share with ES. It is the type of information that the Crown negotiating team requested and expected to be shared during the course of negotiations, but was not provided. For example, some of the groundwater assessment results start from 1995. It is also likely that NZAS knew, or should have known, about the higher volume of stored SCL based on historical production rates. The released information does not change the Crown's position of deferring negotiations until substantive and detailed remediation information is shared, and Rio Tinto is able to make corresponding remediation commitments.

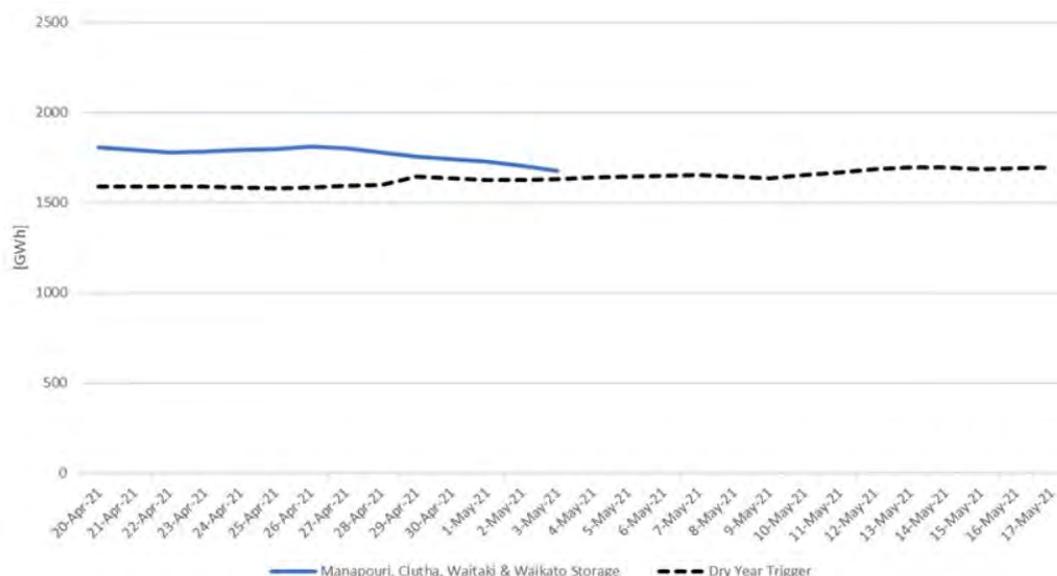
Energy market developments

Meridian Energy Limited (MEL) and NZAS have agreed an electricity swap to enable NZAS to voluntarily reduce its electricity consumption

The swap has been agreed in response to the recent low levels of hydro storage. The agreement compensates NZAS for any load it voluntarily reduces up to 30.5MWh per

hour and is in place until 31 May 2021. The announcement did not detail the price to be paid. The swap does not replace MEL’s ability to call a Smelter Demand Response (SDR) if the dry year trigger level in the main MEL / NZAS electricity contract is reached. Under an SDR event, NZAS would be required to achieve a reduction in electricity consumption of 250GWh over 130 days. This would be about 14% of Tiwai’s usual demand, and around 1.7% of total New Zealand demand during the 130 days. Hydro storage has recently moved closer to the trigger level (see Figure 1). An SDR event is likely if dry conditions continue.

Figure 1: Hydro storage versus dry year trigger threshold (3 May 2021)



(Source: Meridian Energy Limited)

The Commerce Commission is making enquiries into the hedging arrangements between MEL and Contact Energy (Contact) relating to supply of NZAS

Under the arrangements, Contact will supply MEL with an average of 100MW of baseload electricity to power NZAS, which has a full electricity consumption of 572MW when operating at full capacity. The Commerce Commission’s enquiries do not amount to an investigation. Contact have stated that the commission had previously made enquires when new power supply deals had been arranged with NZAS. MEL also has financial contracts with other generators, such as Genesis Energy, to protect it from higher wholesale prices.

Other relevant updates

Over the past two months there has been a noticeable change in NZAS’ media strategy. NZAS has taken a more proactive approach to publicly releasing information on the condition of the site. This may be an attempt to change the public narrative, following some negative press about the environmental waste stored on the site.

Ivan Vella invited officials from the Treasury and the Ministry of Business, Innovation and Employment (MBIE) for lunch with himself and other business leaders from across the country on 6 May 2021, the same day as your scheduled meeting. The Treasury

declined the invitation and officials understand MBIE's Chief Executive, Carolyn Tremain, will attend.

The Crown's 2003 and 2004 indemnities related to the Haysoms Dross have been released to the media under the Official Information Act

s9(2)(a) requested the indemnities which the Treasury released on 3 May 2021, alongside the accompanying advice. Both Sir Michael Cullen and NZAS were provided advanced notice of the release as relevant parties. The Ministry for the Environment is separately providing information related to the 2021 Matarua dross indemnity.

Each 2003 and 2004 Crown indemnity applies to, and is limited to, the dross waste that was stored at two premises in 2003 and 2004 and moved to the Tiwai site (collectively the Haysoms dross). The indemnities make the Crown liable for costs associated with digging up the dross waste, moving it to the nearest landfill that is able to dispose of the dross waste (or any other site agreed to by the Crown) and landfill charges payable for the disposal of the relevant waste (but not storage costs). Costs are only payable when the waste is 'required' to be removed, which is triggered by a statutory or legal requirement but excludes a voluntary movement of the waste.

George Wibberley, Senior Analyst, Transitions, Regions, and Economic Development, s9(2)(k)

Jean Le Roux, Manager, Transitions, Regions, and Economic Development, s9(2)(k)
s9(2)(k)

Annex One: Biographies

	<p>Ivan Vella, Chief Executive of Rio Tinto Aluminium</p> <p>Ivan was appointed Chief Executive of Rio Tinto Aluminium in January 2021. He has worked for Rio Tinto for 17 years within senior leadership positions, working on the Copper and Iron Ore product groups. Ivan previously worked for Deloitte Consulting for five years, focused on technology and innovation in the mining industry. Ivan is also currently the president of the Chamber of Minerals and Energy of Western Australia.</p>
	<p>Jen Nolan, Director External Relations (NZ)</p> <p>Jen Nolan joined Rio Tinto as Director External Relations (NZ) in 2014. Jen is responsible for the corporate reputation of NZAS and Rio Tinto in New Zealand. Her work incorporates government and regulatory affairs, internal and external communications, including media management, oversight of NZAS' community investment programme and the role of deputy chair of the Major Electricity Users' Group (MEUG).</p>

From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Friday, 21 August 2020 8:27 am
To: David Darby; Hon Grant Robertson; Hon Dr Megan Woods
Cc: ^Parliament: Natalie Labuschagne; craig.renny@parliament.govt.nz
Subject: Letter from Alf Barrios
Attachments: Letter - Alf Barrios to Minister Woods and Robertson (20082020).pdf

Hello David and Ministers,

This letter from Alf to you is dated 20 August and was approved to send late last night NZ time. We appreciate it does not take account of your email below David.

Kindest regards

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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From: David Darby <David.Darby@parliament.govt.nz>
Sent: Thursday, 20 August 2020 9:27 PM
To: Nolan, Jennifer (RTA NZAS) s9(2)(a); Hamilton, Stewart (RTA NZAS) s9(2)(a)
Subject: [External] Message from Minister Woods

Dear Jen and Stew,

I have been asked to convey a message to you from Minister Woods and Minister Robertson.

They are aware of your deadline and intend to respond to you as soon as they can.

I would be very pleased if you could pass this message along to your colleagues. More formal communication is in preparation.

Best regards

David

David Darby

Private Secretary (Energy & Resources) | Office of Hon Dr Megan Woods | Minister of Energy and Resources
6.1 Executive Wing | Parliament Buildings | Wellington | New Zealand
s9(2)(k), s9(2)(g)(ii) | E: David.Darby@parliament.govt.nz

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Rio Tinto
400-1190, avenue des Canadiens-de-Montréal
Montréal (Québec) H3B 0E3

s9(2)(a)

s9(2)(a)

20 August 2020

Hon Grant Robertson, Minister of Finance
Hon Dr. Megan Woods, Minister of Energy and Resources
Private Bag 18041
Parliament Buildings
Wellington 6160 New Zealand

Dear Ministers Robertson and Woods:

Thank you for meeting with us (via Zoom) on 24 July. At that meeting we established a shared desire to ensure the community of Southland and our team at Tiwai Point should have certainty about the timing of the closure of Tiwai Point in order to plan for the future. We agreed that this was a matter of urgency and that we should work together to ensure the smelter can keep contributing to the Southland and national economies over a longer four- year period. This week we also met with the Southland Mayoral Forum and Chamber of Commerce and again this longer exit for the smelter is also their strong preference to enable their community to make a more measured transition.

During our meeting with you we discussed the possibilities of achieving your preference of a slower smelter exit over a number of years as opposed to our current plan to wind down the operation from August 2021 when the current contract with Meridian Energy terminates. As we discussed, in order to achieve this objective, the Tiwai Point smelter needs both a more competitive energy price from Meridian Energy and a fair and commensurate fixed price for energy transmission that accurately reflects the transmission services the smelter receives. If these two factors can be addressed, the smelter can remain operating at near full capacity for the next four years or more, securing current employment levels and continuing to supply low carbon aluminum to customers in New Zealand and abroad.

I appreciate that the Government is now coping with the resurgence of Covid 19 in Auckland and has had to postpone the general election. We commend you for the extraordinary steps you have taken to keep people safe. However, to provide the certainty we agreed was necessary, we need to move with more deliberate speed. To date, we have only received a request for detailed information from the Ministry of Business Innovation and Employment, which we provided immediately in early August. We have not heard from officials since that time.

Our team was heartened to hear your public comments last week that Treasury's Economically Significant Business Unit is engaged on the Tiwai Point matter and our team is ready to engage with them as soon as possible, however to date we have not heard from this team.

Ministers, I appreciate the extraordinary circumstances that we are in due to the COVID pandemic, but as agreed on our call, we owe it to the workforce at Tiwai Point and the greater Southland community to work toward improving the competitive position of the smelter for a longer period of time than our current plan to close next August. If it is possible to address the transmission cost, we should come to agreement quickly. If it is not, then we should make that clear to all stakeholders so they can make plans accordingly.

I would like to have another meeting in the next few days to assess progress. Please let me know if possible.

Yours sincerely,

s9(2)(a)

Alf Barrios
Chief executive, Aluminium

From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Friday, 28 August 2020 7:50 am
To: Hon Dr Megan Woods; Hon Grant Robertson
Cc: ^Parliament: Natalie Labuschagne; David Darby
Subject: Letter from Alf Barrios in response to letter of 21 August
Attachments: 27082020_ Letter in response to Minister Woods from Alf Barrios.pdf

Good Morning,

Please find attached a letter from Alf Barrios in response to Minister Woods letter of 21 August.

Kindest regards

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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Rio Tinto
400-1190, avenue des Canadiens-de-Montréal
Montréal (Québec) H3B 0E3

s9(2)(a)

s9(2)(a)

27 August 2020

Hon Dr. Megan Woods, Minister of Energy and Resources
Private Bag 18041
Parliament Buildings
Wellington 6160 New Zealand

Dear Minister Woods,

Thank you for your letter of 21 August which crossed paths with my letter of 20 August. I would like to again acknowledge the extraordinary effort made by your Government in dealing with a resurgence of Covid-19 and the delays this has caused. We are grateful for the Government's efforts to keep our employees, retirees and customers in New Zealand safe.

However, we are also conscious of the tremendous stress and pressure that our employees and community are facing due to uncertainty over NZAS' future. At our 24 July meeting, we all committed to a four-week timeframe to provide NZAS employees and the Southland community with certainty.

As such, we were somewhat surprised that your letter indicates that clarity on a fair transmission price will only be provided toward end of year. It is our view that we need to reach more specific terms on transmission cost as a matter of urgency. Clarity on transmission is the lynchpin to a mutually beneficial extension agreement that ensures that New Zealand remains a producer of low carbon aluminum and that facilitates long term energy planning in New Zealand.

It is worth noting that we have exchanged views with Meridian in good faith, however we have not finalized terms for a four-year power agreement as referenced in your letter. While a four-year time frame is preferable for all stakeholders, our ability to make that commitment is dependent on understanding all of the operating cost for NZAS beyond 2021.

Based on the meeting you refer to in March 2020, the transmission information is available and the work to determine a fair charge for transmission to NZAS has been completed. We are committed to working with your team to achieve a Heads of Agreement within the next two weeks. This includes Rio Tinto making further commitments provided there is clarity over a fair fixed price for electricity transmission. We have already made contact with your team to expedite these discussions.

With your support and commitment to this process and timeframe, together we can provide much needed certainty to the NZAS workforce and community. We are committed to working quickly so that the agreement could be brought to Cabinet Ministers before parliament dissolves on 6 September.

Please let me know if you would like to discuss these issues on the phone, I am at your disposal for a call.

Yours sincerely,

s9(2)(a)

Alf Barrios
Chief executive, Aluminium

CC: Minister Robertson

From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Thursday, 15 October 2020 12:47 pm
To: Hon Grant Robertson
Cc: ^Parliament: Natalie Labuschagne; ^Parliament: Craig Renney
Subject: Letter from Alf Barrios to Minister Robertson
Attachments: 20201014_Alf Barrios to Minister Robertson.pdf

Hello Minister Robertson and team,

Please find attached a letter from Alf Barrios.

Kindest regards and all the best for the upcoming election.

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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Rio Tinto
PO Box 1665
Wellington 6140
New Zealand

s9(2)(a)

s9(2)(a)

14 October 2020

Hon Grant Robertson, Minister of Finance
Labour
Freepost Parliament
Private Bag 18 888
Parliament Buildings
Wellington 6160

Dear Minister Robertson,

I hope this finds you well. I commend you and the government on your progress in combatting the COVID-19 virus and keeping New Zealand safe.

In our last meeting on 11 September, you gave officials a clear direction to work with our negotiating team to jointly develop a draft Heads of Agreement (HOA) by the end of October in order for Rio Tinto to progress it through our internal processes in time for a new government to approve upon formation of Cabinet.

In her letter of 21 August 2020, Minister Woods affirmed that it was the Government's preference for the Tiwai Point smelter to operate beyond August 2021. This letter also outlined the Government's interest in how the site decommissioning and remediation would be approached, the level of employment during this period and how Rio Tinto would work with you on a long-term plan for the future of the site.

I am writing to express concern that subsequent talks have not been focused on the broad outline of the mutual obligations in a HOA but rather on information collection from Rio Tinto. Some of the information being sought has not yet been developed as our closure planning process has just begun and other parts are commercially sensitive. Our team has now provided written responses with supporting material to the request for information document, as well as two iterations of the draft HOA, but is yet to receive any written feedback or a counter. Finally, the Treasury team has not yet provided a clear indication about how a fixed and fair transmission charge would be delivered and has no mandate to discuss what might be an appropriate charge. This is a pivotal requirement for the HOA to be considered by Rio Tinto.

While we recognize that your officials want information to ensure that the interests of New Zealand are protected in terms of closure planning and environmental protection, we need to prioritize all aspects required to reach an agreement. I know this is a very busy time, but I would ask that you intervene to make sure that we meet the goals and schedule we agreed on 11 September.

Urgency is required for two reasons that should motivate both Rio Tinto and the Government of New Zealand. Firstly, our workforce and the local community need certainty to plan their future. Secondly, we will need to begin implementing our wind down plan in early 2021, absent

an agreed HOA that provides a basis for operating beyond August 2021. I would also note that we are currently heading into "negotiation season" for future metal sales with our customers. NZAS's customers are understandably nervous and considering future supply options, and we expect our competitors to take advantage of this. We are genuinely concerned that NZAS is at risk of losing key customers if we cannot provide them with a longer supply outlook in November.

We appreciated the contact with the Chief Executive of the Treasury and her assurance to Kellie Parker that a draft HOA will be delivered by the end of October, however we are concerned as to whether this is possible without more significant engagement between our teams. In order to meet the objectives set at our 11 September meeting, we both need to push our teams to move at pace.

Thank you again for considering this request, I am at your disposal if you would like to discuss developments.

Yours sincerely,

s9(2)(a)

A grey rectangular redaction box covers the signature area.

Alf Barrios
Chief Executive
Aluminium

From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Saturday, 7 November 2020 11:20 am
To: Hon Grant Robertson
Cc: ^Parliament: Alex Tarrant; ^Parliament: Angela Bray; Barrios, Alf (RTA)
Subject: Letter from Alf Barrios
Attachments: Post 2020 election letter Deputy PM Roberston _as at 06.11.20_.pdf

Hello Deputy Prime Minister,

Please find attached a letter of congratulations from Alf Barrios.

Kindest regards

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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Rio Tinto
PO Box 1665
Wellington 6140
New Zealand

s9(2)(a)
s9(2)(a)

6 November 2020

Hon. Grant Robertson
Deputy Prime Minister and Minister of Finance
Labour Party
Freepost Parliament
Private Bag 18 888
Parliament Buildings
Wellington 6160

Dear Deputy Prime Minister Robertson,

Congratulations on your election and on your appointment as Deputy Prime Minister and Minister of Finance.

For almost 50 years, Rio Tinto's Tiwai Point aluminium smelter has made a valuable economic contribution to the Southland and national economy as a leading manufacturer and exporter of low-carbon aluminium. Utilizing the natural advantages New Zealand possesses in the production of aluminium -- hydro-electricity generation, a hardworking and skilled work-force and proximity to key customers -- we are proud of our contribution to the economy and a low-carbon future.

It was very welcome news when Prime Minister Ardern indicated her support for measures to improve the competitiveness of the Tiwai Point smelter through fair transmission pricing during her September visit to Invercargill. We have engaged in good faith with government officials to provide information to facilitate an outcome that would improve Tiwai Point's competitive position and allow for a longer transition period beyond August 2021. This will also allow the nation's electricity industry to constructively plan for the future.

As we have discussed, we need to proceed at pace if we are to lock in a positive outcome and provide our employees, the Southland community and our customers with certainty. We are now past the deadline we agreed for joint development of a HOA which would form the basis for Rio Tinto and Sumitomo Chemical Corporation to commence internal approval processes. My understanding from my team is that negotiations are at a standstill and urgently need to be reenergized.

Clearly, there is a strong interest from the government to know how the site will be remediated, and we committed to a robust planning process to ensure that the site is appropriately remediated and where possible repurposed. We have commenced our detailed work with a preliminary study, which will be completed in 2021, and we are committed to working closely with the government throughout the process. However, we have not yet had any details from the government about the transmission pricing relief, which is fundamental to our consideration of extending the life of the Tiwai Point smelter beyond August 2021.

I believe that now is the time for us to try to work out final details at our level so that Cabinet can consider the HOA at its meeting on 16 November. If we do not meet the timing goals that we had previously agreed, the uncertainty for our customers, employees and the Southland community will continue to escalate. We must honour our commitment to provide the people that work at Tiwai Point with certainty before Christmas.

The current uncertainty is leading some of our key personnel to understandably consider options for other employment and we have seen some team members leave the business in recent months. This in turn is leading to operational performance issues due to reduced expertise at site. As you may know, we had an urgent stability issue in the smelter this week that jeopardized ongoing safe operation. These performance issues create unacceptable risk to safe operation and could force us partially curtail operations by end of year.

I suggest we meet as soon as possible to bridge outstanding issues and make every effort to come to agreement on a positive outcome.

Thank you for your ongoing support of the Tiwai Point smelter and the people that work there. On behalf of my colleagues in New Zealand, we wish your Government all the best as it navigates a historically challenging period in time.

Yours sincerely,

s9(2)(a)



Alf Barrios
Chief Executive

From: s9(2)(a)
Sent: Wednesday, 11 November 2020 10:37 am
To: G Robertson (MIN); Megan Woods (MIN)
Cc: Dr Liz Craig; s9(2)(a)
Subject: Closure of the NZAS Tiwai Point Aluminium Smelter
Attachments: 11 November 2020, Letter to Grant Robertson and Megan Woods.pdf

Importance: High

Morning Ministers

On behalf of Mayor Hicks, chair of the Southland Mayoral Forum, please find attached a letter for your immediate consideration.

Kind regards

s

s9(2)(a)

W: www.goredc.govt.nz

Gore District Council, 29 Bowler Avenue, PO Box 8, Gore, 9740



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11 November 2020

Hon Grant Robertson, Minister of Finance
Hon Megan Woods, Minister of Energy and Resources

Dear Ministers

Firstly, congratulations on the election result and for your promotion to Deputy Prime Minister. Such an endorsement and promotion is always hard-earned and I am sure it has been an absolute whirlwind for you over the last few weeks. From a Southland perspective, we are also very pleased that we will still be working with you in your capacity as Finance Minister.

Further to our recent meetings and subsequent correspondence regarding Tiwai Smelter. As you would expect, the Southland Mayoral Forum and Southland leadership group have been actively working with your nominated representatives to assist and support our agreed objective to negotiate a mutually acceptable resolution. We are equally interested in progressing discussions regarding a just transition package with Central Government which compliments such an outcome.

Having met with the Treasury negotiation team and Rio Tinto over the last two weeks, we are becoming increasingly concerned about timelines and the need for more urgency if we are to achieve a positive outcome before the end of December. Whilst we are very conscious of the commercial sensitivities that exist, it seems that all parties are still some way off reaching agreement on key issues such as remediation and transmission pricing. We will do anything we can to assist and we respectfully seek your direct input to the negotiation process in the

best interests of all Tiwai employees and their whanau who are anxiously awaiting a decision which will allow them to move on with more certainty leading into Christmas.

We would like to meet with you again at your earliest convenience to progress our pre-election discussions, ensure we are all aligned and agree on next steps as soon as possible. We are willing to come meet with you in Wellington if that would suit, otherwise we available anytime that works for you electronically via zoom.

I look forward to hearing back from you.

Yours sincerely

s9(2)(a)

Tracy Hicks, JP
Gore District Council Mayor
Southland Mayoral Forum Chair

s9(2)(a)

E: tracy.hicks@goredc.govt.nz | W: www.goredc.govt.nz

On behalf of Mayoral Forum Action Team
Mayor Tim Shadbolt, Invercargill City Council
Mayor Gary Tong, Southland District Council
Nicol Horrell, Environment Southland Chair
Ian Collier, Great South Chair
Neil McAra, Chamber of Commerce Chair
Dean Whaanga, Kaupapa Taiao Manager

Cc Dr Liz Craig

s9(2)(a)

Hon Grant Robertson

MP for Wellington Central
Deputy Prime Minister
Minister of Finance
Minister for Infrastructure
Minister for Sport and Recreation
Minister for Racing



12 November 2020

Alf Barrios
Chief Executive
Rio Tinto
s9(2)(a)

Dear Alf

Thank you for your letter of 6 November 2020. I appreciate your stated aspirations for Rio Tinto's Tiwai Point Aluminium Smelter and your engagement with officials to achieve a transition period beyond August 2021.

The appropriate way to progress these discussions continues to be through the Crown's negotiating team, led by Maureena van der Lem at the Treasury. I have instructed my officials to progress negotiations and they keep me, and other Ministers well updated.

I can assure you the Government remains committed to reaching an agreement where a good outcome that takes a holistic approach to an extension of operations at the site of between 3 to 5 years, and a managed and safe exit can be achieved.

The Government is committed to supporting the Southland economy now and in the future, and we are committed to ensuring an appropriate, locally-led transition for Southland. We also must, as stewards of the land, ensure appropriate remediation of the Tiwai site, preventing any scenario that would see toxic waste not appropriately dealt with and the landscape left in an undesirable state. I strongly encourage Rio Tinto to consider what substantive environmental remediation commitments it can make, beyond process commitments which, while useful, do not determine outcomes and therefore provide limited comfort to the Crown.

As you know we are very much aware of your request regarding transmission pricing. Notwithstanding the further work needed to reach a holistic agreement including appropriate remediation commitments, I believe a mutually acceptable transition package is achievable.

In response to your concerns regarding the timeframe, I recognise the urgency of discussions, however I would like to reiterate that the deadline for Cabinet consideration was always post-election at the end of November 2020. This was made clear in our meeting of 11 September. I understand from our officials that Rio Tinto has felt unable to share some information with the negotiating team, which has delayed the process. Despite this, progress has continued to be made. With your co-operation and a mutual adherence to timeframes as well as the commitment of both parties, your end of year deadline appears achievable.

While my strong preference is to give the people of Southland certainty as soon as possible, we must also undertake a robust process; the way to expedite this is to continue the constructive work underway with officials. To help achieve this, I have asked my officials to provide your negotiating team with an update after Cabinet meets on Monday 16 November 2020 and I hope Rio Tinto then feels able to recommence discussions including what commitments you can make to enable a holistic agreement.

I sincerely believe that with your commitment to achieving appropriate environmental remediation, this work can be concluded by the end of the year.

Yours sincerely



Hon Grant Robertson
Deputy Prime Minister

Cc: Hon Dr Megan Woods
Hon David Parker
Rt Hon Jacinda Ardern

Hon Grant Robertson

MP for Wellington Central
Deputy Prime Minister
Minister of Finance
Minister for Infrastructure
Minister for Sport and Recreation
Minister for Racing



2 December 2020

NZAS Director
Andrew Horvat

s9(2)(a)

Dear Andrew,

I am writing to you regarding the proposed extension of the operation of the Tiwai smelter.

I am pleased to hear that our respective negotiating teams are making progress and have identified some mutually acceptable common ground. That said, I am aware that there are some significant differences that are yet to be resolved. We remain committed to reaching a mutually beneficial agreement.

From our perspective, I wanted to ensure that you fully understand the importance the New Zealand Government is placing on environmental remediation. I understand that this has been conveyed to your negotiating team.

I am confident that the directors, the auditors and the shareholders of New Zealand Aluminium Smelters Limited fully understand their legal duties and obligations and the expectations of the broader Southland community in relation to closure and remediation, and will have appropriate measures in place to meet them in full.

Regardless of any extension to the operation of the smelter, a considerable amount of remediation and rehabilitation work will need to be undertaken to deal with existing environmental issues. The 2019 financial statements for NZAS includes a provision for close down and restoration costs of \$294m.

Because the issue is important, the New Zealand Government would very much like to understand the basis on which that provision has been calculated, and receive assurance from you that you think that provision is adequate to cover the costs of remediation and rehabilitating the smelter site once operations cease.

I look forward to the successful conclusion of our negotiating teams' discussions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Grant Robertson'.

Hon Grant Robertson
Minister of Finance

Cc: Hon Dr Megan Woods, Minister of Energy and Resources
Hon David Parker, Minister for the Environment

From: ^Parliament: Angela Bray
Sent: Friday, 4 December 2020 5:21 pm
To: ^Parliament: Francesca Crutchley
Cc: ^Parliament: Natalie Labuschagne; Beth Houston
Subject: Letter from Alf Barrios
Attachments: Post 2020 election letter deputy PM Robertson_as_at 04.12.20.pdf

For logging please.

Natalie/Beth – thought you might like to note.

From: Nolan, Jennifer (RTA NZAS) ^D
Sent: Friday, 4 December 2020 5:15 PM
To: Hon Grant Robertson <Grant.Robertson@parliament.govt.nz>
Cc: Alex Tarrant <Alex.Tarrant@parliament.govt.nz>; Angela Bray <angela.bray@parliament.govt.nz>
Subject: Letter from Alf Barrios

Dear Deputy Prime Minister Robertson,

Please find attached a letter from Alf Barrios.

Kindest regards

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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The Rio Tinto logo consists of the words "RioTinto" in a white, sans-serif font, centered within a solid red rectangular background.

Rio Tinto
400-1190, avenue des Canadiens-de-Montréal
Montréal (Québec) H3B 0E3
s9(2)(a)
s9(2)(a)

4 December 2020

Hon. Grant Robertson
Deputy Prime Minister and Minister of Finance
Labour Party
Freepost Parliament
Private Bag 18 888
Parliament Buildings
Wellington 6160
By email: Grant.Robertson@parliament.govt.nz

Dear Deputy Prime Minister,

Further to our previous meetings and correspondence, and more recently your letter of 2 December 2020 sent by email to Rio Tinto personnel who are directors of New Zealand Aluminium Smelters Limited (**NZAS**), I wanted to respond on behalf of Rio Tinto and Messrs Horvat, Prest and Hamilton. I understand that our partner in NZAS, Sumitomo Chemical Company, will also respond to your letter to their representatives on the NZAS board.

Rio Tinto takes its operating and closure responsibilities very seriously. As you are aware, the closure planning process currently underway, including the planning for the wind-down of smelter operations from August next year, is expressly designed to address all legal requirements and optimise all possible opportunities for rehabilitation and repurposing of the site consistent with the law and [Rio Tinto's closure standard](#)¹. As my team has shared with your officials, we have many examples of "best of industry" closure outcomes around the globe. An integral part of our comprehensive closure planning will be an extensive engagement with the Southland community, and Ngāi Tahu.

In relation to the provision in the NZAS accounts, the provision is an estimate of the cost (at the 31 December 2019 balance date) of closure of the smelter and rehabilitation of the smelter site, based on numerous assumptions which have an inherent uncertainty. While the approach in developing this provision was consistent with financial reporting standards and legal requirements, it is now an historical best estimate, which will be further revised as the context is reviewed and closure planning is more fully understood.

My team has made it clear to officials that the final cost of closure and remediation could alter materially depending on a number of factors. There are many options to be considered for remediation (or repurposing) of the smelter site which could affect the final level of expenditure. It is only after the detailed closure study planning process is complete that there will be a more accurate picture of the relevant remediation (or repurposing) options, and their costs. Importantly, the provision in the NZAS financial statements does not take account of the potential for repurposing the smelter site (which we understand is an outcome the government is interested in, for the benefit of Southland and the New Zealand economy overall).

¹ <https://www.riotinto.com/en/sustainability/closure>

We are committed to working collaboratively with the government to understand the closure and remediation options and the development and implementation of plans for dealing with waste material at the site. We hope we can continue to build a collaborative relationship with officials to plan for eventual closure or repurposing of the site.

In regard to our joint efforts to provide certainty to the Southland community through a mutually beneficial agreement, it is now clear from the government's most recent change in position that the engagement with the government team will not be able to meet our agreed target date. The government's requirements and demands regarding remediation have been put forward without any clear offer of transmission pricing relief, which we had previously agreed was to be part of a Heads of Agreement and the government had publicly indicated was an acceptable way to improve the competitiveness of the Tiwai Point smelter.

[The Labour Party Fact Sheet](#)² released in September indicated it would: *Work with Rio Tinto and Transpower to reach a fair price for transmission costs over the extended closure period, to lessen the impact on power prices for other consumers.*

The Fact Sheet also stated that negotiations with Rio Tinto would "be focused on establishing a fair price for the transmission costs paid to Transpower by the Aluminium Smelter."

Unfortunately, a fair transmission price has apparently been replaced with an offer of a subsidy payment from the government. As I have indicated to you on a number of occasions, the NZAS partners do not want a subsidy.

Given this change in position, I regret that I do not see this engagement providing a way for us to meet our mutual commitment to Tiwai Point workers and the people of Southland to provide certainty by Christmas. If so, there is little value for the negotiation teams to continue to meet to find a comprehensive Heads of Agreement that satisfies all parties' concerns.

Rio Tinto and its partners in NZAS will consider our options given the failure to reach agreement with the government and see what we can do to provide some level of certainty to the people that work at Tiwai Point and the Southland Community.

While we regret we have not been able to find a mutually satisfactory way to secure the competitive position of the Tiwai Point smelter, we are committed to supporting the Southland economy to transition to a post Tiwai future and a collaborative and transparent process for planning for closure or repurposing of the site.

I will keep you apprised of the decisions made by the NZAS partners and as always remain available to discuss these matters.

Yours sincerely,

s9(2)(a)



Alf Barrios
Chief Executive

² <https://www.labour.org.nz/release-a-locally-led-transition-for-southland>

From: s9(2)(a)
Sent: Wednesday, 9 December 2020 6:42 pm
To: Hon Grant Robertson
Subject: RE: Letters to NZAS Directors
Attachments: Sumitomo Chemical Letter to Hon Grant Robertson (December 9 2020) - 34456710 v 1.PDF

Dear s9(2)(a)

Please find attached a letter in response to the letters attached to your email below.

I would be very grateful if you could draw this letter to the attention of Minister Robertson.

Kind regards

s9(2)(a)

From: Hon Grant Robertson <Grant.Robertson@parliament.govt.nz>
Sent: Wednesday, 2 December 2020 4:15 pm
To: s9(2)(a)
Subject: Letters to NZAS Directors

Dear s9(2)(a)

Please find attached letters from the Minister of Finance for the attention of Sumitomo Chemical's representatives on NZAS's board. Could you please forward these on to the relevant directors? We will also be sending these letters in the mail.

Letters have been sent separately to Rio Tinto's representatives.

Kind regards

- s9(2)(a)

s9(2)(a) | **Private Secretary | Office of Hon Grant Robertson**
Deputy Prime Minister | Minister of Finance | Minister for Infrastructure | Minister for Racing | Minister for Sport and Recreation
Member of Parliament for Wellington Central
Private Bag 18 888 | Parliament Buildings | Wellington 6011 www.beehive.govt.nz

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private residence. The proactive release will be consistent with the provisions in the Official Information Act, including privacy considerations. Under the Privacy Act 1993 you have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you'd like to ask for a copy of your information, or to have it corrected, or are concerned about the release of your information in the meeting disclosure, please contact the sender. You can read more about the proactive release policy at <https://www.dia.govt.nz/Proactive-Releases#MS>

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SUMITOMO CHEMICAL

<http://www.sumitomo-chem.co.jp>

December 9 2020

Hon Grant Robertson
Deputy Prime Minister
Minister of Finance
Parliament Buildings
Wellington 6160
New Zealand

By email: Grant.Robertson@parliament.govt.nz

Dear Minister

New Zealand Aluminium Smelters

Sumitomo Chemical Company, Limited (**Sumitomo**) refers to your letter of 2 December 2020, sent by email to Sumitomo personnel who are directors of New Zealand Aluminium Smelters Limited (**NZAS**). This letter is sent on behalf of Sumitomo and all such directors, being ^{s9(2)(a)} [REDACTED] Mizukami, ^{s9(2)(a)} [REDACTED] (**Sumitomo Directors**).

Sumitomo has been provided with a copy of the letter sent to you by Mr. Alf Barrios dated 4 December 2020. Sumitomo and the Sumitomo Directors generally agree with the views expressed in that letter.

Sumitomo notes Rio Tinto is the manager of NZAS, and therefore it is appropriate for Rio Tinto to take the lead in negotiations with the government, on behalf of NZAS. Rio Tinto has kept Sumitomo well informed of developments in the negotiations, and at this stage Sumitomo intends to maintain observer status in any negotiations (reserving its position on any final arrangement).

We assure you that the Sumitomo Directors are aware of their legal obligations as directors of NZAS. Sumitomo is also aware of its legal obligations as a shareholder of NZAS.

Sumitomo takes issues of corporate social responsibility, including environmental matters, very seriously. It is well aware of the planning process currently underway for the wind-down of smelter operations from August next year, which is expressly designed to address such matters.

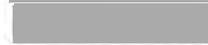
Sumitomo and the Sumitomo Directors note Mr Barrios' comments about how the provision for rehabilitation and closure in the NZAS financial statements was derived. The provision is an historical best estimate, which will be revised as the detailed closure study planning process is progressed. For that reason, the provision cannot provide an appropriate basis for negotiation of the proposed Heads of Agreement (**HoA**).

SUMITOMO CHEMICAL<http://www.sumitomo-chem.co.jp>

From Sumitomo's perspective the HoA negotiations are currently at an impasse. Sumitomo agrees with Rio Tinto that the negotiations do not appear to provide a way forward to allow an outcome within the required pre-Christmas timeframe.

s9(2)(ba)(i)



 This is not consistent with the promises made by the Labour Party before the New Zealand election, that it would work with Rio Tinto and Transpower to establish a fair price for transmission costs over the extended closure period of the smelter, and is very disappointing to Sumitomo and the Sumitomo Directors.

At the same time, the New Zealand government has sought open-ended and unquantified environmental remediation commitments which do not reflect the current stage of planning in the remediation process.

In summary, the smelter needed transmission pricing relief, but instead it is being offered a highly conditional remediation subsidy.

s9(2)(ba)(i)



Sincerely yours,
SUMITOMO CHEMICAL CO., LTD.

s9(2)(a)



From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Monday, 14 December 2020 8:24 am
To: s9(2)(a)
Cc: Barrios, Alf (RTA); s9(2)(a); Hon Grant Robertson; Hon Dr Megan Woods; Hon David Parker; David Darby; s9(2)(a)
Subject: Response to letter from Sir Tipene O'Regan
Attachments: Response Ngai Tahu Sir Tipene O'Regan FINAL_Rev1 14 DEC 20.pdf

Hello Mike,

Please find attached a letter from Alf Barrios the Chief Executive of Rio Tinto's Aluminium Product Group in response to Sir Tipene's letter to Simon Thompson.

I look forward to hearing from you to facilitate engagement as flagged in the letter.

Kindest regards

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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RioTinto

Rio Tinto
400-1190, avenue des Canadiens-de-Montréal
Montréal (Québec) H3B 0E3
s9(2)(a)
s9(2)(a)

14 December 2020

Sir Tipene O'Regan Kt., CRSNZ
Upoku, Te Runaka o Awarua

Via email: Tipene Gerard O'Regan s9(2)(a)

Kei te rangatira, tēnā koe,

I have been asked by the Chairman of the Rio Tinto Group, Simon Thompson, who was honoured to receive your letter, to respond on his behalf as the Tiwai Point smelter in Aotearoa New Zealand are part of my accountabilities as the Chief Executive of Rio Tinto's Aluminium Product Group.

Thank you for acknowledging the strong relationship between your Awarua Runaka and NZAS over the past decades of operation at Tiwai. Our team at Tiwai has been grateful for their growing understanding of tikanga Māori and the special relationship of Ngāi Tahu with the land we operate on. The team at Awarua has also helped facilitate a current programme running at Tiwai called, Tiwai Mana, which is supporting our people through these difficult times of uncertainty and I am very grateful for the kaitiakitanga of the people of Te Rau Aroha in supporting this work.

It is very timely to receive your letter as we are indeed seeking to engage formally with you as we consider how to build the future of Tiwai over the coming years. Our people and their safety is of paramount importance to us, as is the community and environment in which they live.

We also acknowledge your mana whenua over the land at Tiwai Point and your kaitiakitanga or duties as guardians of the land, sea and environment. Rio Tinto also takes its operating and closure responsibilities very seriously. We have begun a closure planning process and a significant element of that process is to understand the significance of the land to your people. We are committed to working collaboratively with you and the government to understand closure and repurposing options for the site and the development and implementation of plans for dealing with waste material at the site. We hope we can continue to build a collaborative relationship with you and officials to plan for the eventual closure and repurposing of the site.

As well as our NZAS Chief Executive and General Manager Stew Hamilton based in Invercargill, we have recently appointed in our Aluminium Pacific Operations a General Manager Closure Readiness, s9(2)(a) based in Brisbane, who is engaged in the significant closure planning work that has commenced in relation to Tiwai. Our Wellington-based Director of External Relations, Jennifer Nolan is able to facilitate contact with your designated representatives at their earliest convenience. For example, as part of our detailed closure planning process, we are seeking to understand the cultural significance of the site, which could include your support in undertaking appropriate studies and

assessments of cultural heritage at Tiwai Point. We would welcome the opportunity to host your designated representatives so that they might be able to prepare a detailed impact assessment identifying what issues may need to be addressed as part of the closure and potential repurposing process.

As you are aware, we have learned some difficult lessons recently regarding our relationships with traditional owners of the land and we are now taking the time to reflect on these lessons and are committed to listening, learning and changing. Rio Tinto remains committed to working with indigenous communities to achieve mutually beneficial outcomes. I am proud that earlier this year I signed the “New Day Agreement” between Rio Tinto and the Cheslatta Carrier Nation, setting a long-term partnership to support future collaboration between the Cheslatta Carrier Nation and Rio Tinto’s hydroelectric operations in the Nechako watershed in British Columbia, Canada. This agreement will see the implementation of an innovative Cheslatta Carrier Nation-led stewardship initiative on the land, water and environment of the region. We are also proud of our relationships and partnerships with traditional owners in our Gove bauxite mine in the Northern Territory, and the Amrun bauxite mine located on Wik and Wik-Waya Traditional Lands between Weipa and Aurukun in Far North Queensland. Last year, the Amrun bauxite mine partnership was recognised for creating sustainable Indigenous procurement and employment opportunities through its [Amrun Project Local and Indigenous Participation Strategy](#). This site, as well as our Tiwai Point smelter have also been accredited by the Aluminium Stewardship Initiative (ASI) as meeting its high standards, including respect for indigenous people. You may be interested to know that the raw materials that are made into aluminium at Tiwai Point originate from the land of the Wik-Waya people. We are privileged to have their support and endorsement to responsibly mine the bauxite that ultimately becomes high purity aluminium made at Tiwai Point and is a key feature of millions of iPhones.

Earlier this year, the New Zealand government indicated that they agreed with Southland leaders that it was in the national interest to improve the competitiveness of the Tiwai Point smelter by ensuring the cost of energy transmission to Tiwai Point was fair. We continue to hope this can be achieved. We are continuing to work with the government and with our power provider (Meridian) on extended closure options and remain committed to supporting the Southland economy.

As soon as health related border restriction allow, Kellie Parker (Managing Director Pacific Operations) and I would very much like to meet with you. Our team is grateful for your outreach and we acknowledge your mana whenua of this site. Please know that you have our full commitment to working with you to achieve mutually beneficial outcomes, for our team that works at Tiwai Point, the Southland community and Ngāi Tahu.

Nāku noa nā

s9(2)(a)

Alf Barrios

Cc: By email
Hon Grant Robertson, Deputy Prime Minister
Hon Megan Woods, Minister of Energy and Resources
Hon David Parker, Minister for the Environment

Hon Grant Robertson

MP for Wellington Central
Deputy Prime Minister
Minister of Finance
Minister for Infrastructure
Minister for Sport and Recreation
Minister for Racing



15 December 2020

Alf Barrios
Chief Executive
Rio Tinto Aluminium

s9(2)(a)

Dear Alf,

On behalf of my colleagues, thank you for meeting with us on 14 December 2020. We share your commitment to finding a mutually agreeable way forward to extend the Tiwai Point aluminium smelter's operation to achieve a managed exit and transition for Southland.

I am pleased that our negotiating teams have reached agreement in principle on the tenure of a potential extension of operations and the agreed workforce level required to continue operations for the duration of the agreement.

As we discussed, gaining certainty about how the site will be remediated is very important to the New Zealand Government. We acknowledge that a reduction in the smelter's transmission charges is a priority for New Zealand Aluminium Smelters Limited (NZAS). This letter sets out our proposal for the remediation and transmission commitments for both parties to secure a mutually acceptable extension to the smelter's operations.

Regardless of how the smelter site is used in the future, addressing the toxic contaminants on site including the spent cathode lining and the contaminants present in the unlined landfill and underneath pot lines, is a bottom line for the Crown. This is absolutely critical for the intergenerational wellbeing of the Southland community and the environment, particularly given the climate change and coastal erosion risks faced by the site. It is also a matter of critical importance for mana whenua.

We expect that the site will be remediated in a manner, and to standards, which will leave the buildings and land, including soil, sediment, ground water, coastal water and fresh water, in a state where it will not cause short or long-term environmental harm or a risk to the health of any person.

We were encouraged to hear that you have already started your closure process, including engaging consultants to undertake environmental sampling and testing. Thank you for committing to share the outcomes of this sampling and testing with us – we look forward to receiving both a description of the site investigation and the results.

Therefore, to achieve a managed exit for the smelter and in consideration of our respective interests, the New Zealand Government will provide a Transmission Transition payment to NZAS of s9(2)(j). This payment would start from January 2021 until December 2024 to align with the tenure of Meridian's offer to NZAS for a revised electricity contract s9(2)(j). NZAS's transmission charges would continue to be allocated using the Transmission Pricing Methodology.

Alongside this, as part of the overall agreement, NZAS will commit to the following:

- Undertake a robust closure planning process which includes partnering with Ngāi Tahu and key stakeholders to identify issues, design processes and develop solutions.
- Remove all spent cathode lining and contaminated soil under pot lines, to be recycled, or disposed of, safely and securely offsite in accordance with modern standards.
- Excavate the smelter's unlined landfill, and ensure all material is either recycled or disposed of safely and securely offsite, at a landfill that complies with modern standards and is not subject to risks of coastal erosion or rising sea levels.
- Continue to provide Environment Southland, the regional authority with the lead responsibility for environmental management, with full access to the site (including to undertake sampling) in order to undertake its monitoring and information gathering obligations.
- Commit to ensuring that appropriate provision is made for post-closure monitoring, maintenance and management of any waste, hazardous substances and contamination that may remain on site following closure.

Rio Tinto and Sumitomo would be required to be parties to the agreement recording these obligations, or otherwise provide a guarantee for these commitments.

s9(2)(b)(ii)

We believe the proposals set out above meet Rio Tinto's stated high remediation standards that you have emphasised. We trust this proposal provides the basis for an agreement in principle to be reached before the end of the year to secure an extension to the smelter's operations. Could you please provide a written response to the above proposal by 12:00pm (NZST) Friday 18 December 2020, including any specific counteroffer outlining how you would deliver on the Government's remediation requirements.

This ambitious timeline is designed to achieve certainty before the end of the year for the Southland community. We look forward to hearing from you and to reaching agreement for the extended operations of the smelter. We share your commitment to provide certainty to the smelter workforce and to achieve an appropriate managed exit and transition for the people of Southland.

Yours sincerely,



Hon Grant Robertson
Deputy Prime Minister

Cc: Hon Dr Megan Woods, Minister of Energy and Resources
Hon David Parker, Minister for the Environment
Rt Hon Jacinda Ardern, Prime Minister

From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Friday, 18 December 2020 4:49 pm
To: Hon Grant Robertson; Hon Dr Megan Woods; Hon David Parker
Cc: s9(2)(a); Barrios, Alf (RTA)
Subject: Response from Alf Barrios to letter of 15 December
Attachments: 201218 RTA Alf Barrios Letter to Deputy PM Grant Robertson 18 Dec.pdf

Hello Deputy Prime Minister,

Please find attached a response from Alf Barrios to your letter of 15 December.

Can I also please take this opportunity to wish you and your colleagues and your families a happy and restful holiday season.

Kindest regards

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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Rio Tinto
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Montréal (Québec) H3B 0E3
s9(2)(a)
s9(2)(a)

18 December 2020

Hon Grant Robertson
Deputy Prime Minister
Minister of Finance
Parliament Buildings
Wellington 6160
New Zealand

By email: Grant.Robertson@parliament.govt.nz

Dear Deputy Prime Minister,

Thank you for your letter of 15 December 2020 and for meeting with us on 14 December. We are grateful for the government's most recent offer and we recognize the positive change in terms. We would like to continue working with you to achieve a mutually satisfactory outcome as quickly as possible, however at this point we do not believe that details and internal approvals for both JV partners can be completed in 2020.

Allowing for a holiday break, I would suggest that our negotiating teams work in earnest to complete an agreement in early January. In this phase, if it appears a mutually agreeable outcome can be achieved, our joint venture partners Sumitomo Chemical Company (SCC) will need to be closely consulted and may wish to participate in further discussions on these matters. While we work closely with our joint venture partner, as a participant in the NZAS Joint Venture, any remediation commitments will need to be endorsed by SCC.

In regard to the specific aspects of your letter, I am pleased to confirm our understanding of a number of core aspects in this letter and share issues in regard to others. We recognize that it is very important for the New Zealand Government to have a clear view of how the Tiwai Point site will ultimately be closed and remediated. It is also clear that consideration of productive repurposing of the site for ongoing economic benefit and employment in the Southland is a priority.

We recognize that the transmission power rebate proposal that you have put forward acknowledges our longstanding public position that the competitive position of the Tiwai Point smelter has been undermined by the allocation of the cost of energy transmission infrastructure by Transpower. A rebate mechanism that recognizes the unfair and disproportionate cost for Tiwai is a pragmatic solution to the legislative and administrative issues that exist in the current Transmission Pricing Methodology. We look forward to discussing with you the mechanism by which this would be delivered, and the basis for your proposed s9(2)(j) s9(2)(j) reduction on NZAS transmission charges of s9(2)(j) s9(2)(j), which remains a large gap to Transpower's calculated stand-alone charge of s9(2)(j) s9(2)(j).

With regard to remediation of the site, we can commit to partnering with Ngāi Tahu and key stakeholders on a robust closure planning process to identify issues, design processes and develop solutions. As we have previously confirmed, our closure planning process is robust and inclusive of our key stakeholders.

We can commit to ensuring appropriate provision is made for post closure monitoring, maintenance and management of any waste, hazardous substances and contamination that may remain on site following closure.

We could also commit to removing all spent cell lining (SCL), once we have established an in-country pathway, with your support. At present, there is currently no end user for SCL in New Zealand, following the closure of the Holcim cement plant at Westport, so removal and processing is a more challenging component to resolve, as it relies on other countries processing waste generated in New Zealand, which is becoming increasingly difficult. We would seek your assistance in working with industry to identify other local opportunities, which we have found to be the most effective way of disposing of this product in the shortest timeframe in other jurisdictions.

We could commit to working with Environment Southland and other relevant regulators in relation to closure planning, including sharing closure planning and related information that is appropriate to share, including the work of relevant external experts who will be undertaking technical components of the closure planning on issues such as contamination. Of course we will continue to work collaboratively with the regulators on business as usual processes, as we have done for the nearly 50 years of our operation at Tiwai, and can agree plans with regulators to visit the Tiwai Point site, within the limitations of what is acceptable to NZAS on what is a live and potentially hazardous operating site.

In relation to the landfill on site, we could commit to ensuring there is no contamination from the landfill into the receiving environment. We have commenced detailed work to understand the landfill to a level of detail that can properly inform options and an appropriate strategy to deliver that outcome. This will take into consideration sea level rises and coastal erosion risks. As that work proceeds, this is an area we suggest would be beneficial to share relevant information, including for example assumptions around climatic changes and similar.

With regard to your comments in relation to the Emissions Trading Scheme, we continue to factor the current allocation and price into the economic assessment of the viability of NZAS.

On the transmission cost rebate proposal, I would like to continue discussions about the amount of the rebate and how that correlates to the amount of transmission infrastructure that Tiwai Point uses. In our view, the rebate should be commensurate to a measurement of actual usage.

As you are aware, we are also progressing discussions with Meridian Energy. I look forward to our teams reconnecting to discuss transmission and remediation with a view to reaching agreement in January 2021.

Yours sincerely and hoping you have a well deserved break over the holiday period.

Warm regards,

s9(2)(a)



Alf Barrios
Chief Executive
Rio Tinto Aluminium

From: s9(2)(a)
Sent: Thursday, 14 January 2021 9:24 pm
To: Rt Hon Jacinda Ardern; Hon Dr Megan Woods; Hon Grant Robertson
Cc: Hon James Shaw
Subject: Climate catastrophe in the making ... COVID is not the problem .. Our Government is.
Attachments: The greening of Genesis.pdf

Power play: Meridian Energy reaches deal with Rio Tinto over Tiwai Point Smelter

<https://www.nzherald.co.nz/business/power-play-meridian-energy-reaches-deal-with-rio-tinto-over-tiwai-point-smelter/3OYQZHLDUOI5F2AL3KMBX3SIY/>

Apparently, some time ago the door slammed permanently closed on our collective opportunity to limit the global average temperature rise to 1.5 degrees.

The first of the three graphs below shows that to stay within 1.8 degrees we would have to cease all emissions today. TODAY!
and that would also mean the closing of Tiwai point smelter immediately.

Governments and businesses around the world are playing chicken in a game that is loaded against us... .. In this game everyone loses.
Trading time that we don't have for short term economic benefit will turn out to be the worst decisions ever..

The second graph shows that even with rapid compound reduction of global emissions by 2050 the 2 degree limit will have been all but crossed.

MBIE projects our emissions will continue to RISE for the next five years! The Mauna Loa data for global atmospheric CO2 levels confirms that there is yet no hint of globally emissions falling, even from COVID! This in spite of published claims that emissions have dropped 7% as a result of COVID!? That this has yet to register in the Keeling data should be of significant concern.

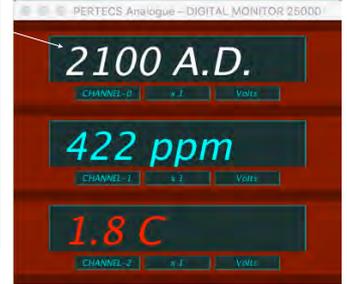
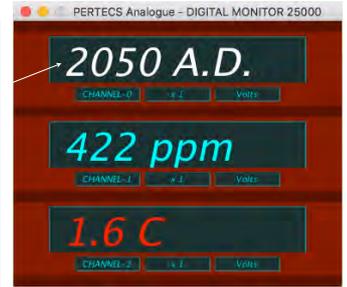
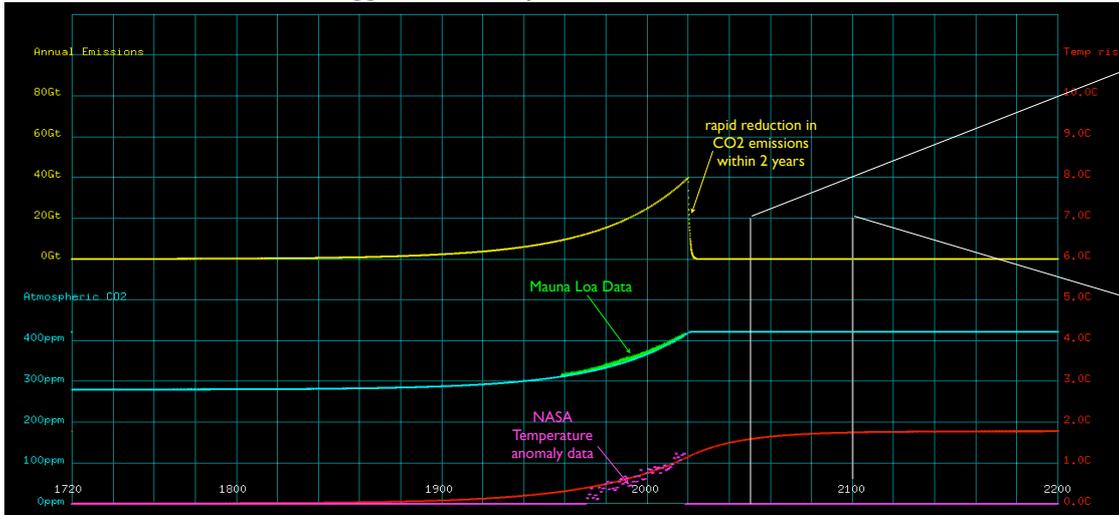
The third graph shows that a delay of 10 years, as Genesis is now proposing (c.f. NZ Herald on The Greening of Genesis") in respect of the closure of Huntly, implies that we will sail past the 2 degree limit before 2050.

Labour in this three year term looks to have all but successfully squandering our last chances of staying within the Paris agreed limit of 2 degrees..

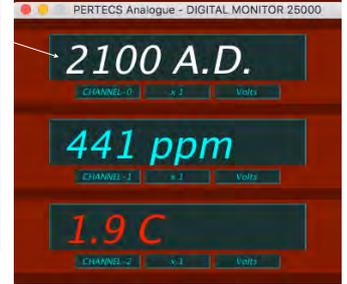
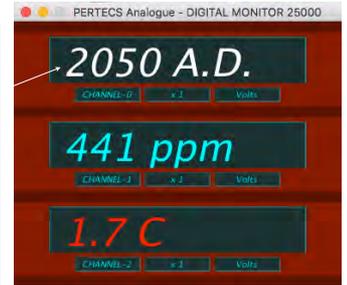
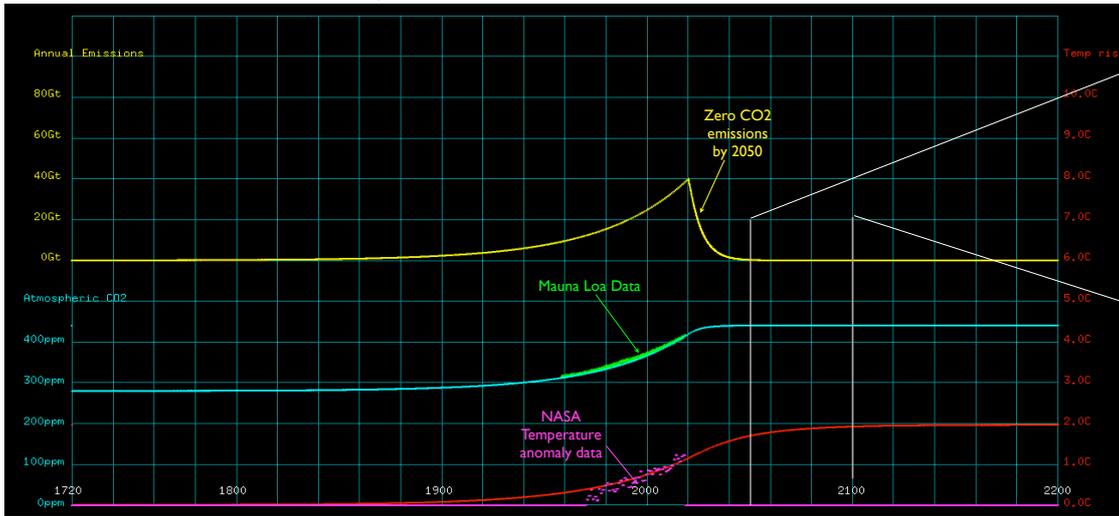
Jacinda claims our government to be accessible I am more than happy to meet to discuss the above results with government ministers.

Sincerely
s9(2)(a)

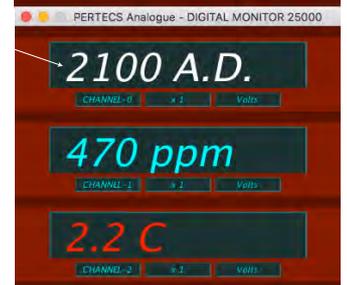
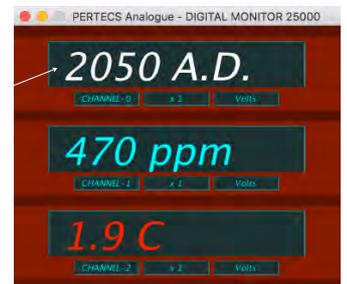
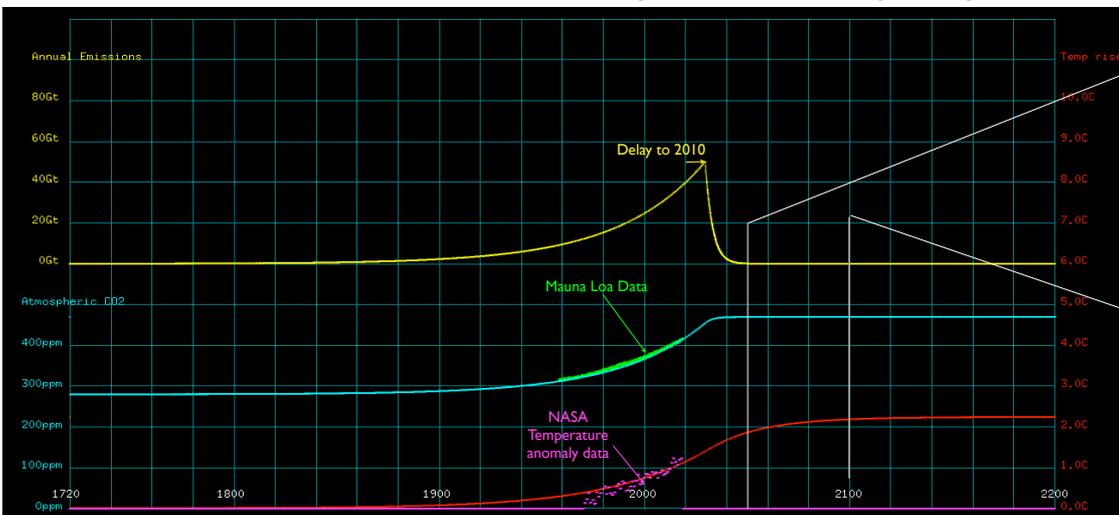
Case I: Aggressive compound reduction in emissions



Case II: compound reduction to Zero Emissions in 2050



Case III: GENESIS wants to wait ten years before closing Huntly



The Rio Tinto logo consists of the words "RioTinto" in white, sans-serif font, centered within a solid red rectangular background.

Rio Tinto
400-1190, avenue des Canadiens-de-Montréal
Montréal (Québec) H3B 0E3
T : s9(2)(a)
E: s9(2)(a)

18 February 2021

Hon Grant Robertson
Deputy Prime Minister
Minister of Finance
Parliament Buildings
Wellington 6160
New Zealand

By email: Grant.Robertson@parliament.govt.nz

Dear Deputy Prime Minister,

As you may know, Rio Tinto recently announced changes in our leadership team. I have been appointed as Rio Tinto's Chief Commercial Officer and will be relocating to Singapore, Kellie Parker has been appointed Chief Executive Australia and joins the Rio Tinto Executive Committee, and Ivan Vella has been appointed Chief Executive Rio Tinto Aluminium.

As Kellie and I depart Rio Tinto Aluminium and we celebrate our fiftieth year of operation at Tiwai Point, we wanted to thank you and your government for your continued engagement and support for the team at Tiwai Point. We are very pleased to have secured an electricity arrangement, which will allow continued operation for another four years. We recognize that this situation was causing anxiety for the community and it is good that we have agreed on a way forward. We remain focussed on securing a fair transmission cost for the smelter over the next four years and we will continue to engage with the Treasury-led team in order to secure a fair outcome.

As we have previously outlined, Rio Tinto takes its operating and closure responsibilities very seriously. Our team has shared with your officials, the many examples of "best of industry" closure outcomes delivered by Rio Tinto around the globe. An integral part of our comprehensive closure planning will be ongoing and extensive engagement with your government, the Southland community, and Ngāi Tahu.

The team at Tiwai Point are also pleased that a solution has been reached regarding removal of the ouvea premiss from the Matura paper mill site. This was a vexing issue for all involved and we are glad that we have found a way to advance the matter

My successor as Chief Executive of the Aluminium Group, Ivan Vella, has been with Rio Tinto for 17 years during which time he had many different roles around the world, most recently running our Iron Ore business in Western Australia on an interim basis. Ivan is looking forward to maintaining the good relationships we have established with you and your Cabinet colleagues over the past year and we know you will enjoy engaging with him. We will reach out to schedule a meeting to introduce Ivan in the coming weeks as we progress the leadership transition.

Finally, Kellie and I want to express our pride in the team at Tiwai and their commitment to contributing to New Zealand's economy and standing on the international stage by bringing kiwi grit and ingenuity to produce some of the world's lowest carbon aluminium, a metal that resolutely remains the metal of our low-carbon future.

Yours sincerely,

s9(2)(a)

A grey rectangular redaction box covers the signature area.

Alf Barrios
Chief Executive
Rio Tinto Aluminium

Hon Grant Robertson

MP for Wellington Central
Deputy Prime Minister
Minister of Finance
Minister for Infrastructure
Minister for Sport and Recreation
Minister for Racing



5 March 2021

Alf Barrios
Chief Executive
Rio Tinto
s9(2)(a)

Kia ora Alf

On behalf of my colleagues Hon Megan Woods and Hon David Parker, I wish to thank you for your continued engagement regarding the future of the Tiwai Point aluminium smelter.

We were encouraged to learn that the smelter would continue to operate until the end of 2024, with the acceptance of Meridian's electricity offer. Securing an economic window to extend the smelter's operations is a good outcome for the employees of the smelter and the wider Southland community as it provides both much-needed economic certainty and time for a Just Transition. It is my expectation that this also provides Rio Tinto with sufficient time to plan and ensure that the site is remediated to the standard New Zealand expects.

Regarding your proposal to the Crown negotiating team on 25 January 2021, we were again disappointed that your approach did not address the remediation activities and outcomes which we have repeatedly outlined as a non-negotiable bottom line for the Crown.

As I outlined in my letter of 15 December 2020, the New Zealand Government is concerned about the lasting environmental impacts of the smelter's operations. In particular, we are concerned about how the hazardous Spent Cathode Linings (SCL) will be dealt with, your plans for adequately addressing the existing unlined landfill, and what contamination may be present in land and water under the smelter itself. They are serious environmental issues, potentially exacerbated by rising sea levels. Any future agreement with the New Zealand Government must adequately address these pressing environmental concerns.

I acknowledge the issues NZAS perceives with the Transmission Pricing Methodology (TPM). The anticipated changes to the TPM will provide improvements including the Prudent Discount Policy and this is the appropriate avenue to address the smelter's transmission charges.

Throughout negotiations the Crown has requested material information about the environmental state of the site as well as commitments from Rio Tinto on remediation activities and outcomes. My officials have kept me apprised of developments and it is unfortunate that NZAS does not have or is not able to share critical site information or make environmental remediation commitments at this time. As a consequence we have allocated \$300,000 to Environment Southland to carry out on-site investigation. We ask that you cooperate with Environment Southland in their discharge of their legal duties and rights to investigate.

We understand that your closure planning process is at a nascent stage but are encouraged to hear that NZAS' Closure Study is progressing. When this work is further advanced, and

material outputs are shared with the Crown, both parties will be better informed regarding the environmental state of the site and the remediation activities that you will undertake.

Once we have clarity about the environmental remediation required, and certainty about how you will achieve this, including treatment of the SCL and the unlined landfill, we may then be able to make real progress towards an agreement. I have instructed my officials to defer negotiations until you are able to make firm environmental commitments regarding the SCL and landfill.

In making this decision I have considered the work we both have to do – NZAS completing its Closure Study, and the Crown preparing for Southland's Just Transition when the smelter exits in 2024.

In the meantime, Crown officials from the Ministry for the Environment and the Ministry of Business, Innovation and Employment will continue to engage with NZAS' Closure Study processes with dual goals: to support a regionally led Just Transition and to ensure that remediation requirements are understood and undertaken. The New Zealand government will, in parallel, undertake our own work to better understand the state of the smelter site and the actions that are required to restore it, including ongoing engagement with local stakeholders.

Finally, thank you for your letters to Ministers on 18 February 2021. Congratulations on your promotion to Chief Commercial Officer at Rio Tinto, we look forward to working with your successor, Ivan Vella, in due course.

Yours sincerely



Hon Grant Robertson
Deputy Prime Minister

Cc: Hon Dr Megan Woods, Minister of Energy and Resources
Hon David Parker, Minister for the Environment

From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Wednesday, 31 March 2021 5:19 pm
To: Hon Grant Robertson
Cc: Hon Dr Megan Woods; Hon David Parker; David Darby; ^Parliament: Scott Russell; Vernon Small; Vella, Ivan (RTA)
Subject: Letter to Deputy Prime Minister from Ivan Vella
Attachments: 2021 Letter IV to Dep PM 31 March FINAL.pdf

Hello Deputy Prime Minister,
Please find attached a letter from our newly appointed Chief Executive Aluminium Ivan Vella. Ivan is also looking forward to meeting with you tomorrow.
Please don't hesitate to come back to me if you need any further information.
Kindest regards
Jennifer Nolan
Director, External Relations NZ

s9(2)(a)

RioTinto



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Rio Tinto
400-1190, avenue des Canadiens-de-Montréal
Montréal (Québec) H3B 0E3

s9(2)(a)

s9(2)(a)

31 March 2021

Hon Grant Robertson, Minister of Finance

Grant.Robertson@parliament.govt.nz

Cc:

Hon Dr Megan Woods, Minister of Energy and Resources

Hon David Parker, Minister for the Environment

Freepost Parliament

Private Bag 18 888

Parliament Buildings

Wellington 6160

Dear Deputy Prime Minister Robertson,

I have recently been appointed Chief Executive of Rio Tinto's Aluminium product group, taking over from my colleague Alf Barrios. Alf and his team have briefed me on Rio Tinto's New Zealand Aluminium Smelter (NZAS), its operations, history and recent engagements with the New Zealand Government. We thank you for your recent letter dated 5 March 2021.

The last two years have been turbulent for the Southland community, Ngāi Tahu, our employees and your government, following our strategic review and initial announcement to cease operations. Pleasingly we managed to agree terms with Meridian for the continuation of a power agreement and our operations, enabling the ongoing economic contribution and jobs for the next four years.

It is clear, however that we have not met your expectations in terms of our ability to share information regarding how we would close NZAS, and remediate the site upon closure. I want to assure you we will work closely with your government, the community and regulators, and to ensure you are a central part of the closure study process.

I understand one of the first areas to improve is the provision of information and commitment on the management of spent cell lining (SCL), the nature and condition of the soil and groundwater on the site, and the related treatment of the landfill.

- With regard to SCL, I can commit that we will remove all spent cell lining, to be recycled, or disposed of, safely and securely offsite in accordance with modern standards. We are currently surveying the material to confirm all data relevant to finding the best removal option.
- On both the landfill and the soil and water conditions, we have undertaken continuous monitoring of these locations and can commit to sharing that monitoring data with you to show conditions and trends.
- We have also engaged experts on a new sampling program specific to forming closure remediation options, program details of which we have been sharing with Environment Southland. A further 238 samples have recently been taken around the site.
- The analysis and assessment of those samples is underway now and we commit to sharing this data with you with a view to fully understanding site conditions and thus the remediation options, in partnership with your government, Environment Southland and Ngāi Tahu.
- I note site visits were not accommodated late last year. I want to be clear that you are very welcome to visit the site at any time that is convenient to you. We have recently welcomed

Environment Southland on a visit to the site on 23 March, and extended invites to your offices and officials.

- I am also engaging directly with Ngāi Tahu, as I want to ensure they are closely involved in the closure discussions. My team in New Zealand is also in frequent contact with the four hapū collectively working as Te Murihiku.

Rio Tinto, and I personally, want to assure you when it comes time, we will close the smelter in a responsible and sustainable manner, meeting international closure standards. We want to make sure the community is confident in the way we deal with any contamination on the site, how waste will be managed and disposed of and address any environmental concerns about an operation that has been part of the community for 50 years. We recognise that over time, community and regulatory expectations evolve, and we will ensure our closure processes and outcomes are transparent and meet the needs of today.

I am grateful for the opportunity to meet you this week, and have the opportunity to hear more about your concerns and expectations first hand. I am also happy to make further time to provide a briefing on our approach to closure in as much detail as you would find useful. Naturally we have to work very collaboratively with your team and the broader group of government agencies throughout the closure process. One of the early steps we need to take is to establish how best to provide the information you require and how best to involve the New Zealand Government in our closure process.

I will continue to working closely with our local team at NZAS and the broader Rio Tinto team in the region to ensure we fully re-align the efforts and engagement to address your concerns. I am committed to rebuilding an ongoing collaborative and positive working relationship with the New Zealand Government. Should you have any concerns please reach out to me (on +61 418 709 594) directly so they can be immediately addressed.

Yours sincerely,

s9(2)(a)



Ivan Vella
Chief Executive
Aluminium

From: Hamilton, Stewart (RTA NZAS) s9(2)(a)
Sent: Friday, 7 May 2021 9:27 am
To: Hon Grant Robertson
Cc: ^Parliament: Scott Russell
Subject: Stew Hamilton leaving Tiwai (NZAS)

Dear Minister,

After three years as Chief Executive and General Manager of New Zealand's Aluminium Smelter (NZAS), I have decided to accept an offer to join Mercury Energy as General Manager Generation.

This has been a very hard decision to make. I began my career as a graduate engineer at NZAS and it has been an incredible privilege to come back as a leader. I have had a connection to NZAS for most of my professional life and leaving will be very difficult.

I am immensely proud of the team at Tiwai, especially during what was a very tough year last year. The team managed to operate efficiently through a level four lockdown, focus on their work while being unsure of their futures, and through their commitment to keep each other safe, were given a Rio Tinto CEO commendation for safety.

I will remain at Tiwai until July and the process to select my successor is already well underway. I have no doubt that the team will be placed in good hands.

This in no way reflects on recent media coverage and I stand behind my statements that the environmental monitoring and practices at Tiwai are world class and ensure everyone on site is safe and our surrounding environment is unharmed.

Many thanks for your support over the past four years, both for me personally, and on behalf of our team at Tiwai. Rio Tinto and NZAS are committed to working with Southland and New Zealand to achieving positive and collaborative outcomes.

Yours sincerely,

Stew Hamilton



Stewart Hamilton

CEO and General Manager

s9(2)(a)

Operated by



NEW ZEALAND'S ALUMINIUM SMELTER

Private Bag 90110, Invercargill 9840, New Zealand

nzas.co.nz

From: ^Parliament: Angela Bray
Sent: Thursday, 27 May 2021 7:57 am
To: s9(2)(a)
Cc: ^Parliament: Alex Tarrant; Hon Grant Robertson
Subject: FW: Letter to Prime Minister Ardern from Rio Tinto CEO Jakob Stausholm
Attachments: Letter to Prime Minister Jacinda Ardern - 25052021.pdf

For logging please, thanks.

From: Nolan, Jennifer (RTA NZAS) s9(2)(a)
Sent: Thursday, 27 May 2021 7:54 AM
To: Rt Hon Jacinda Ardern <Jacinda.Ardern@parliament.govt.nz>; Hon Grant Robertson <Grant.Robertson@parliament.govt.nz>; Hon Dr Megan Woods <Megan.Woods@parliament.govt.nz>; Hon David Parker <David.Parker@parliament.govt.nz>
Cc: Le Roy Taylor <LeRoy.Taylor@parliament.govt.nz>; David Darby <David.Darby@parliament.govt.nz>; Vernon Small <Vernon.Small@parliament.govt.nz>; Scott Russell <Scott.Russell@parliament.govt.nz>; Angela Bray <angela.bray@parliament.govt.nz>; Stausholm, Jakob (RTHQ) s9(2)(a)
Subject: Letter to Prime Minister Ardern from Rio Tinto CEO Jakob Stausholm

Hello Prime Minister,

Please find attached a letter from our global chief executive Jakob Stausholm.

Kindest regards

Jennifer Nolan
Director, External Relations NZ

s9(2)(a)



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Jakob Stausholm
Chief executive
Rio Tinto

Prime Minister
Cc: Deputy Prime Minister
Minister for Energy
Minister for the Environment

6 St James's Square
London
SW1Y 4AD
United Kingdom

27 May 2021

Dear Prime Minister,

Thank you for making the time to meet with me on 10 May 2021. I appreciate your flexibility to make time for the meeting at relatively short notice.

I want to reiterate some of the points I made during our meeting. We understand that we have to be better at listening to the communities in which we operate. In New Zealand we did not do a good job of listening to our community regarding the Ouvea Premix waste, especially the material stored in Maitai and again I apologise for that. It did not belong to us, and we did not put it there, but it originally came from our operation and we should have done the right thing by removing the risk it presented to the community.

As well as joining my meeting with you, on 6 May 2021, our Aluminium Group Chief Executive Ivan Vella joined site GM of NZAS Stewart Hamilton at a meeting with the Deputy Prime Minister and Ministers for Energy and for the Environment. At this meeting Ivan and Stewart also acknowledged that our environmental performance at NZAS has disappointed you and the community. We now will make this right and during the meeting we made and confirmed the following commitments:

We re-iterated the following commitments made earlier in 2021

- To relocate the Maitai Ouvea to Tiwai point. As of 17 May, 3000 tonnes of material remain stored at Maitai. Progress will continue over the next few weeks until approximately 1500 tonnes remain. We will then await the arrival of the remaining shipping containers (coming from China) in mid-June to complete the removal. Shipping container availability has been very tight globally.
- To remove all SCL from the Tiwai peninsula at closure.
- To share 20 years of ground water monitoring results from the SCL pad and landfill – this is now completed.
- To share the sampling plan for soil contamination on site – this is now completed.
- To work with Environment Southland and Ngāi Tahu to develop further sampling plan requirements and assess options to address the outcomes of the sampling.
- To commit to collaborating with Environment Southland officials allowing them access to site and to working closely with Ngāi Tahu to ensure our standards reflect the cultural significance of Tiwai Point.

RioTinto

At the meeting on 6 May the following new commitments were made:

- Relocate the Taha Ouvea from all other Invercargill locations as the space at Tiwai allows. Once the Mataura material has been moved we will begin the relocation of material from other buildings in Invercargill, with an initial 2000 tonnes expected in the second half of 2021. Further relocation will occur when material from Tiwai has been processed.
- Fund the shortfall in processing costs for Taha Ouvea. It is estimated that there is a current funding shortfall of \$2M to enable the full 23,000 tonnes of material to be processed.
- Take full funding responsibility for the Taha Ouvea and in doing so, assume the current funding commitments of NZAS, MfE, ICC, ES, GDC and building owners (\$4M).
- Provide an undertaking to remove and process the buried Haysom's dross on site. This dross was relocated from Bluff approximately 20 years ago and has a government indemnity in place.
- Work with Ngāi Tahu, MfE and Environment Southland and government officials to identify other processing options for Ouvea and SCL.
- Implement, by Q4 this year, new technology that enables the elimination of washing shells of reduction cells with water. This will significantly reduce cyanide emissions to the coastal marine environment. NZAS' emissions are already better than consent levels, and the change will take the emissions to very low, and certainly world class levels.
- Share soil contamination data, as part of our closure study process, in Q3 with Ngāi Tahu, Environment Southland and MfE.

We hope these commitments will provide the Government, and our partners and stakeholders, confidence that we take seriously our responsibility to operate and close the site in a responsible and sustainable manner.

I note your commitment in this week's Budget to fund a development package for the Southland region. We are also committed to good outcomes for the community we have operated in for over five decades and in particular for our employees and we look forward to working with you to achieving a successful transition when that time comes.

We are pleased to have formed a good working relationship with Ngāi Tahu, Te Murihiku Regeneration and to continue fostering the close bond we have with Te Rūnaka o Awarua. These relationships will form the foundation partnership for our remediation and repurposing work in the coming years.

I will continue to closely monitor progress in New Zealand to ensure that we fully re-align the efforts and engagement to address your concerns. I am committed to rebuilding an ongoing collaborative and positive working relationship with the New Zealand Government.

Yours sincerely,

s9(2)(a)

Jakob Stausholm
Chief executive

Hon David Parker BCom, LLB

Attorney-General
Minister for the Environment
Minister for Oceans and Fisheries
Minister of Revenue
Associate Minister of Finance



2 July 2021

Ivan Vella
Chief Executive
Aluminium
Rio Tinto
400-1190, avenue des Canadiens-de-Montréal
Montréal (Québec) H3B 0E3
Canada

s9(2)(a)

Dear Ivan

Southland commitments

Thank you for meeting with the Deputy Prime Minister, the Minister of Energy and Resources and me on 6 May 2021, to discuss site remediation at Tiwai Point and disposal of the Ouvea Premix at Mataura. We were subsequently copied a letter from Jakob Stausholm, Chief Executive Rio Tinto, to the Prime Minister following a meeting they had on 10 May 2021, that reiterated the commitments you had made.

The New Zealand Government welcomes the commitments you and Mr Stausholm have made and the acknowledgment of New Zealand Aluminium Smelters' (NZAS) responsibilities in respect of its environmental performance and to the Southland community.

Your offer to take full funding responsibility for the Ouvea Premix processing and to assume the current funding commitments of the parties involved is also welcomed. I would appreciate more detail about how you envisage this occurring, both in terms of future costs and in terms of reimbursing funds that have already been spent by the parties involved.

I also thank you for your commitment to remove all the Spent Cell Liner (SCL) material from the Tiwai peninsula and to remove and process the buried Haysom's dross, without recourse to the government indemnity.

In respect of the SCL, I would be grateful if you could provide me with some more detail about the timeframe for commencing removal. When we met, you indicated this would begin forthwith and not await future closure of the site. Your subsequent letter appeared more guarded, committing instead to "remove all SCL from the Tiwai peninsula at closure". You will be aware of my concern that NZAS may distribute its profits, leaving a corporate vehicle unable to fund these costs.

As mentioned during our meeting on 6 May, I would be happy to facilitate engagement with Golden Bay Cement or Fulton Hogan to identify avenues to recycle the SCL. I would also like to understand more about how you propose to deal with the other material located in the landfill.

It has taken a long time to get to this point, but I welcome your efforts to rebuild an ongoing collaborative and positive working relationship with the Government, iwi and the Southland community. It is important for us all to get the right environmental outcomes for Southlanders and the region.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Parker', with a stylized flourish at the end.

Hon David Parker
Minister for the Environment

Cc: Hon Grant Robertson
Minister of Finance

Jakob Stausholm
Chief Executive Rio Tinto

From: Carl [REDACTED]
Sent: Tuesday, 13 July 2021 11:48 am
To: Hon Grant Robertson
Subject: Re: Tiwai point: project 14

Webinar | Managing hazardous waste through the appropriation and exploitation of legally protected coastal marine areas

EIANZ invites you to attend an upcoming webinar presented on Managing hazardous waste through the appropriation and exploitation of legally protected coastal marine areas.

Rio Tinto's Tiwai point aluminium smelter, once the world's largest, retains more hazardous waste than anywhere else in Australasia. The estimated \$300 million liability, nestled amongst sand dunes on New Zealand's most rapidly eroding shoreline, leaches cyanide, fluoride and ammonia onto the beach; uncontrolled, unconsented and untreated in complete absence of any regulatory oversight or recognition. An examination of public records from over 50 years reveals how industrial and government practices continue to appropriate and exploit legally protected coastal marine areas for storage, transport, treatment and disposal of hazardous waste. Carl has combined information a Natural Resources Damage Assessment intended to promote alignment of New Zealand environmental laws with current international best practices, which he will discuss at the webinar.

Note - The views presented in this webinar are those of the presenter and not EIANZ.

Meet the Speaker:

Carl Reller, a chartered environmental engineer, was the principal author of the EXXON-VALDEZ Oil Spill Clean-up Plan, environmentally audited many New Zealand industries, initiated major enforcement actions, was responsible for over 5,000 consents, managed environmental and social impacts of NZ's largest infrastructure projects and was appointed to the International Rooding Federation Board of Directors. He currently advises Catholic Agency for Justice, Peace and Development (CARITAS) on environmental and social impacts in the Asia-Pacific region.

13:00-14:00 NZDT

11:00-12:00 AEST

This webinar will run on Australian Eastern Standard Time (AEST).

CPD Points

Preregistration required.

<https://www.eianz.org/events/event/webinar-managing-hazardous-waste-through-the-appropriation-and-exploitation-of-legally-protected-coastal-marine-areas>

Nga mihi
Carl

-----Original Message-----

From: Hon Grant Robertson <Grant.Robertson@parliament.govt.nz>

To: Carl s9(2)(a)

Sent: Wed, Jul 7, 2021 1:53 pm

Subject: RE: Tiwai point: project 14

[Dear Carl](#)

On behalf of Hon Grant Robertson, thank you for your email.

Your correspondence has been referred to the Minister for his information.

Kind regards,

Hayley

Office of Hon Grant Robertson

Deputy Prime Minister | Pirimia Tuarua

Minister of Finance | Minita Take Pūtea

Minister for Infrastructure | Minita Take Hanganga Whakapūmau

Minister for Sport and Recreation | Minita Take Hākinakina, Tākaro hoki

Minister for Racing | Minita Take Reihi Kararehe

From: Carl s9(2)(a)

Sent: Wednesday, 7 July 2021 1:09 PM

To: G Robertson (MIN) <G.Robertson@ministers.govt.nz>; D Parker (MIN) <D.Parker@ministers.govt.nz>; Megan Woods (MIN) <M.Woods@ministers.govt.nz>

Subject: Tiwai point: project 14

Ministers

I've been researching contamination at Tiwai Point for a year and recently published my independent findings, please find a copy attached which I attest adds to the information you already have.

Carl

Natural Resources Damage Assessment



INTRODUCTION

This Damage Assessment documents nature and extent of harm caused by inappropriate storage, transport, treatment and disposal of hazardous waste. New Zealand is one of the only nations in the world without specific legislation governing hazardous waste; consequently, toxic contaminants are dumped adjacent to coastal marine areas from Tiwai point to Taranaki and Whangarei escaping regulation by calling themselves permanent storage instead of landfill, bio remediation instead of dispersion or recycling instead of soil lined sludge pits.

Rio Tinto's Tiwai point aluminium smelter, once the world's largest, retains more hazardous waste than anywhere else in Australasia, an estimated \$350 million¹ liability, nestled amongst sand dunes on New Zealand's most rapidly eroding shoreline, leaches cyanide, fluoride and ammonia onto coastal marine areas; uncontrolled, unconsented and untreated in complete absence of any regulatory oversight or recognition. An examination of public records from over 50 years reveals how industrial and government practices continue to appropriate and exploit legally protected coastal marine areas for storage, transport, treatment and disposal of hazardous waste. This document intends to align New Zealand environmental laws with current international best practices.

A Natural Resources Damage Assessment may assist mana whenua and others to articulate scale of restoration and compensation for injuries to natural resources from hazardous contaminants. A relevant international best practice example is the *St. Lawrence River Environment Natural Resource Damage Assessment: Restoration and Compensation Determination Plan and Environmental Assessment*, 2012. This report is a work in support of a Restoration and Compensation Plan.

All information in the report was gathered from public information records and on site inspections with acknowledgment and thanks to manu whenua Te Rūnaka o Awarua, Te Rūnaka o Waihōpai, Ōraka Aparima Rūnaka, Hokonui Rūnanga and Environment Southland, Invercargill City Council, Ministry for Environment, Environmental Protection Agency, Department of Conservation, Ministry for Primary Industries, Ministry of Business, Innovation and Employment, Treasury and Office of the Ombudsman.

Carl Reller, chartered environmental engineer

carlreller@netscape.net

¹ Treasury report. T2020/3442. p11. 13 NOV 2020

Natural Resources Damage Assessment: Tiwai peninsula conservation area

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PART 1 SITE LOCATION

Northern Tiwai peninsula is part of Awarua–Waituna one of New Zealand’s three largest and most significant wetlands; our first RAMSAR site, a wetland of international significance sheltering species of rare and endangered plants, animals and birds².



Figure 1 Tiwai peninsula public conservation land (green shading, Department of Conservation GIS viewer)



Figure 2 Tiwai peninsula (Google Earth 2020)

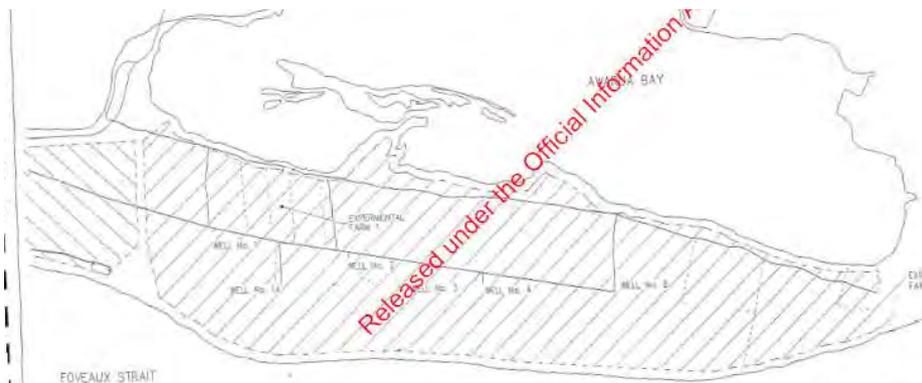


Figure 3 Public conservation land leased (///) and land owned (\\) by Rio Tinto

² <https://www.nzas.co.nz/pages/access-permit-to-tiwai-peninsula/>

1.1 Site ownership and control

Over 700 years ago Ngāi Tahu ancestors left evidence of argillite tools for hunting moa, seals and fish; they hold mana whenua, authority over the land. Ngāi Tahu Claims Settlement Act 1998 validates cultural significance of 121 flora and fauna species. A recently published document³ partially summarises current knowledge.

Ownership	Control
Ngai tahu	manu whenua
Department of Conservation	Flora, fauna, waste ⁴
Ministry of Primary Industry	taking of marine fish
Southland Fish and Game Council	salmonid sport fishing and game-bird hunting
Invercargill City Council	land use and social
Environment Southland	land use and environmental
Rio Tinto	Department of Conservation leases ⁵ 1,667 ha of Crown Land to Rio Tinto for smelter operations until 2029 for: <ul style="list-style-type: none"> • experimental farms, • potable and process water, • experimental monitoring and • operational control.

1.2 Inspection information

Inspected twice in 2021.

³Tiwai peninsula preliminary cultural significance report. Murihiku Regeneration. 2021

⁴Department of Conservation concession lease (clause 6) requires the lessee, at its own expense to *make such property sanitary arrangements as may be required by the Director-General [of Conservation] or any other competent authority and will at reasonable periods remove and destroy rubbish on the said land.*

⁵Department of Conservation lease PAA 14-03-08.

PART 2 WASTE INFORMATION

This environmental investigation is specifically concerned with adverse effects from hazardous waste stockpiles adjacent to public conservation land and rapidly eroding coastal marine areas.

2.1 Waste state

Spent cell liners (SCL) are a listed hazardous waste recognized by the international convention on trans boundary movement of hazardous waste, the Basel Convention, and all countries with hazardous waste legislation. Current disposal cost exceeds \$1,000 USD/ton. SCL is generated by electrolytic reduction of aluminum oxide (refined bauxite) inside steel cells also called “pots” lined with refractory brick outer and carbon inner linings enabling containment of 970⁰C molten salts. After continuous uninterrupted use SCLs degrade within 5 to 8 years are then removed by breaking into pieces ranging from fine dust to 1 meter blocks. Handling and crushing is dangerous and complicated because of elemental sodium, explosive when wet⁶.

2.2 Waste characteristics

SCL is legally characterised as hazardous^{7, 8} because of:

- toxicity of leachable fluoride and cyanide,
- corrosiveness from high pH, alkali metals and oxides and
- reactivity due to toxic, explosive and flammable gasses (hydrogen cyanide, ammonia, phosphine, methane and hydrogen.)

A ton of pot liner contains about 150 kg of fluoride and 2 kg of cyanide. Fluoride comes from aluminium fluoride and cryolite. Cyanide forms by air infiltration and nitrogen reacting with the carbon lining. Ammonia is formed from decomposition of aluminium nitride⁹.

⁶Australian Department of Energy and Environment. Spent pot lining project: feasibility of an agreement based approach to clear stockpiles. Final national summary report. 2016

⁷<https://archive.epa.gov/epawaste/hazard/web/html/k088.html>

⁸Sustainable Pot Lining Management Guide. World Aluminium. 2020

⁹IOP Conf. Series: Earth and Environmental Science 108. Hazardous waste treatment for spent pot liner. 2018

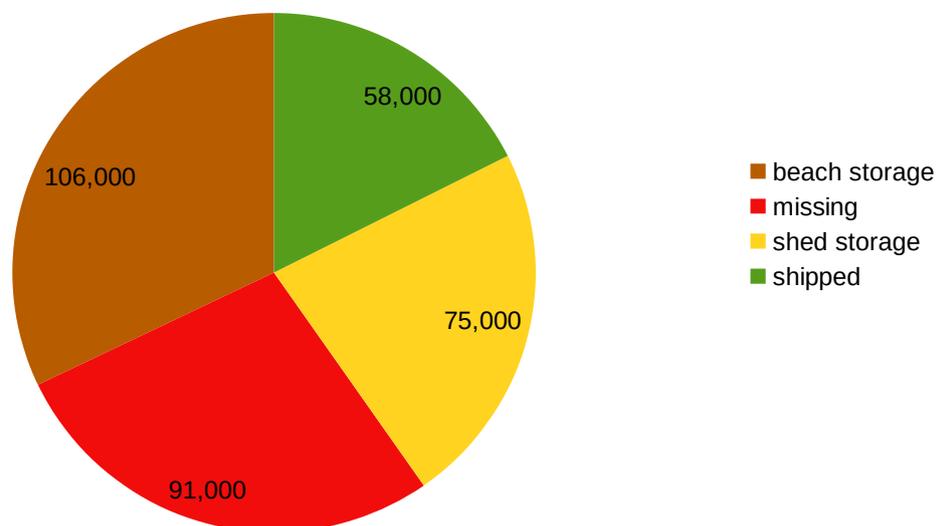
2.3 Waste quantities

During full production over 6,000 tons of Al is produced every 24 hours, worth about \$20 million. Every ton of Al creates about 25kg of SCL; therefore, each day 150 tons of SCL is generated. Based on Rio Tinto publications, from 1971– 2020, approximately 330,000 tons of SCL was generated and currently managed as follows, a:

- stock piled adjacent to public conservation land and rapidly eroding¹⁰ coastal marine area,
- stored in sheds,
- shipped overseas for treatment and disposal; however,
- a third remains unaccounted for¹¹.

Some of which was used in road construction on leased public conservation land (see section 3.4 Illegal/unauthorized dumping.)

Spent Cell Liner: storage, transport and disposal (tons)



¹⁰<https://www.rnz.co.nz/news/national/444921/tiwai-point-smelter-toxic-waste-under-considerable-threat-if-coast-erosion-trend-continues>

¹¹ Treasury report T20200058 p.52. 2021

PART 3 DESCRIPTION OF HAZARDOUS CONDITIONS AND INCIDENTS

Following smelter opening in 1971, SCL was open dumped as far away as possible from the smelter and as close as possible to coastal marine areas on a site named "SCL pad" which drained hazardous waste leachate containing cyanide, fluoride and ammonia into coastal marine areas with accumulative effects apparent downstream of tidal flow¹².

Within 5 years a waste water treatment plant was built next to SCL pad; however, containment systems such as drains, channels and pads were cracked, broken and overflowing.



Figure 4: shoreline vegetative stress outlined in yellow (2020)

Within 10 years cyanide leachate was found in the coastal marine area. However, no corrective action was taken¹³.

¹²Ministry for the Environment. Effects of Air Contaminants on Ecosystems and Recommended Critical Levels and Critical Loads, Ambient Air Quality Guidelines October 2000

¹³NZAS Spent Cathode Storage Pad Groundwater Remediation Studies and Evaluation of Pump and Treat Option, vol 1. Minenco Pty Limited. p9. 1995

After 20 years, in the early 1990's environmental monitoring found coastal marine areas¹⁴ contaminated with extreme levels of cyanide; up to 2,400 mg/L (note: above 0.2 mg/L most marine life rapidly dies¹⁵.)

The SCL pad was shifted north onto open ground then returned to a refurbished concrete pad (see Figure 28) and leachate collection system which promptly failed. Currently 15,000 m² of plastic covers a renovated SCL pad¹⁶.

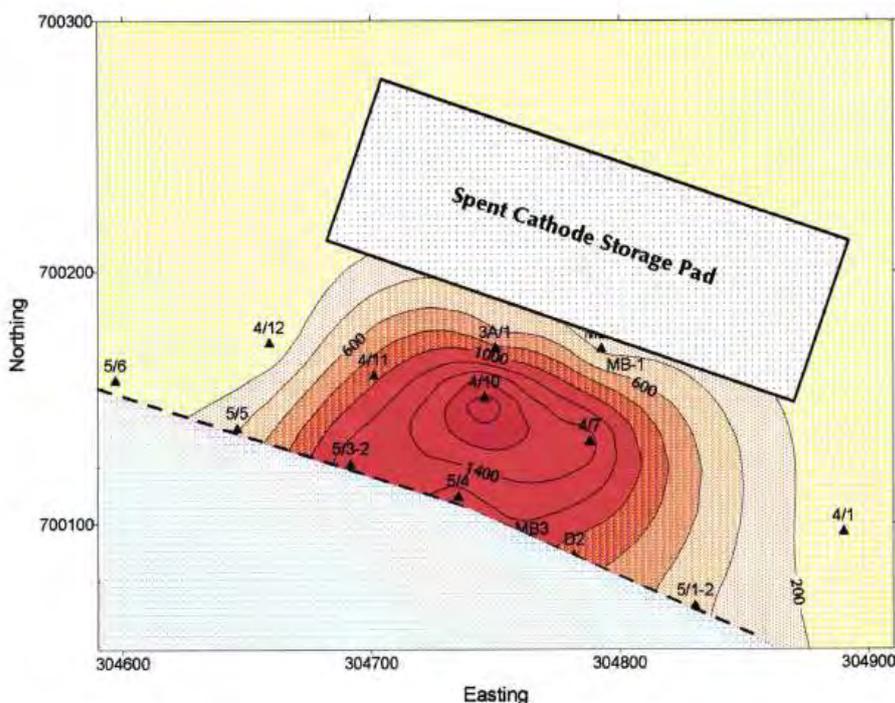


Figure 10. Total Cyanide Concentration in Sand Aquifer (January 1995)

Figure 5: from Minenco report

¹⁴ NZAS Spent Cathode Storage Pad Groundwater Remediation Studies and Evaluation of Pump and Treat Option, vol 1. Minenco Pty Limited. p10. 1995

¹⁵ Ambient Water Quality Criteria for Cyanides. USEPA, pB3-4. 1980

¹⁶ NZAS Application for Discharge of Treated Effluent into Foveaux Strait AEE. p31, 1995

3.1 Groundwater contamination

A contaminated plume extends from up gradient¹⁷ of SCL pad into coastal marine area containing cyanide, fluoride and ammonia. At low tide leachate flows across coastal marine area into surf zone¹⁸.

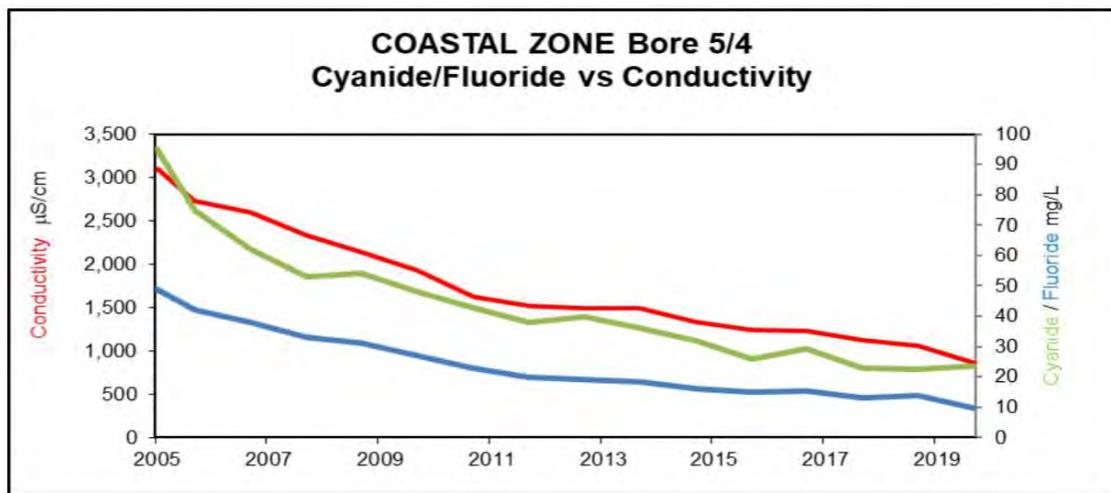


Figure 6: SCL monitoring update, p22. NZAS 2020

Although concentrations have decreased over 30 years, ground water in coastal marine area is still contaminated (25 mg/L) at levels X140 times higher than ANZECC trigger levels (0.007 mg/L)

¹⁷NZAS SCL Groundwater Status. p8, 2020

¹⁸NZAS Spent Cathode Storage Pad Groundwater Remediation Studies and Evaluation of Pump and Treat Option, vol 1. Minenco Pty Limited. p60. 1995

3.2 Surface water contamination

Historical surface water appears to have been shaped by an old wetland or estuary. Ground water abstraction ranked MODERATE (4,500 m³/d.) Currently, peninsular surface water¹⁹ is not present.

3.3 Contamination of soil, pastoral herbage, livestock and waters



Figure 7: Conservation land vegetation, down wind

3.3.1 Fluoride

Fluoride in Soil – adverse effects

Average of four samples is 370 mg/kg.

New Zealand's Ecological and Environmental Soil Fluoride Guideline Value is 200 ppm for areas of ecological significance²⁰.

Sample Type: Soil						
	Sample Name:	1A 08-Apr-2021 11:55 am	2B 08-Apr-2021 12:04 pm	3C 08-Apr-2021 12:21 pm	4D 08-Apr-2021 12:43 pm	
	Lab Number:	2583706.1	2583706.2	2583706.3	2583706.4	
Dry Matter	g/100g as rcvd	81	70	85	89	-
Total Cyanide*	mg/kg dry wt	0.21	0.52	0.42	0.30	-
Fluoride*	mg/kg dry wt	72	580	260	570	-

¹⁹<https://www.es.govt.nz/environment/water/groundwater/groundwater-management-zones/tiwai>

²⁰Environmental management perspectives of soil fluoride in New Zealand agricultural soils. P. Jover. Massey university thesis. Table 10, p 38. 2017

Fluoride in vegetation – adverse effects

Fluoride is one of the most phytotoxic of the common air pollutants, and produces comparable environmental effects at concentrations 10 times lower than other more common pollutants²¹. Fluoride poisoning symptoms develop progressively above 20–30 mg/kg (F in dry matter) maximum licensed depositional limits (40 mg/kg) placed on pastoral herbage are frequently exceeded, recently X16 fold over previous limits (639 mg/kg annual average²².)

Fluoride in livestock – adverse effects

An experimental farm on leased public conservation land was established to monitor adverse effects of fluoride poisoning on sheep and cattle bone, teeth, urine and tissue. Guideline fluoride in herbage levels were frequently exceeded; bone concentrations reached critical levels²³. Experimental farms were eventually closed²⁴.

²¹Ministry for the Environment. Effects of Air Contaminants on Ecosystems and Recommended Critical Levels and Critical Loads, Ambient Air Quality Guidelines. P28. October 2000

²²NZAS Annual report. p 38. 2012

²³Ministry for the Environment. Effects of Air Contaminants on Ecosystems and Recommended Critical Levels and Critical Loads, Ambient Air Quality Guidelines October 2000

²⁴Ministry for Primary Industries. The Health of Livestock: Tiwai Experimental Farms. Part 1. 1999

Fate and transport

Soils strongly fix fluoride forming complexes²⁵; thus, depletion by leaching and removal by crops is very slow²⁶. Fluoride concentrations tend to increase with soil depth. Studies of plants grown on heavily polluted soil near aluminium smelters found uptake in roots and stomata with lower concentrations in leaves than roots²⁷. Plant fluoride toxicity appears as chlorosis, peripheral necrosis, leaf distortion, and malformation or abnormal fruit development²⁸ not dissimilar to other stress injuries.

3.3.2 Cyanide

Cyanide in soil – adverse effects

The average of four samples is 0.36 mg/kg total cyanide. For comparison, an international study of 91 contaminated sites found 51 had a median cyanide concentration of 0.4 mg/kg²⁹. Consequently, the results are typical of a contaminated site.

Some countries intervene if soil cyanide (complexed) levels exceed 50 ppm in residential areas. Ministry for the Environment's guideline³⁰ is 1,000 ppm for both residential and agricultural.

Sample Type: Soil						
	Sample Name:	1A 08-Apr-2021 11:55 am	2B 08-Apr-2021 12:04 pm	3C 08-Apr-2021 12:21 pm	4D 08-Apr-2021 12:43 pm	
	Lab Number:	2583706.1	2583706.2	2583706.3	2583706.4	
Dry Matter	g/100g as rcvd	81	70	85	89	-
Total Cyanide*	mg/kg dry wt	0.21	0.52	0.42	0.30	-

²⁵ Toxicological Profile for Fluorides. US Public Health Service Agency for Toxic Substances and Disease Registry. p205, 2003

²⁶ Fluorine and Fluoride. WHO Geneva. p24, 1984.

²⁷ Toxicological Profile for Fluorides. US Public Health Service Agency for Toxic Substances and Disease Registry. p236, 2003

²⁸ Ibid. p46.

²⁹ Cyanides in the environment—analysis—problems and challenges. E. Jaszczak, Ż. Polkowska, S. Narkowicz, J. Namieśnik. Environ Sci Pollut Res Int. 2017; 24(19): 15929–15948. page 165.

³⁰ Ministry for Environment. EGVs spread sheet.

Fate and transport

Surface soils release cyanides via hydrogen cyanide volatilisation. Subsurface soil cyanide biodegrades at low concentrations³¹. Cyanide readily complexes to less toxic forms $\text{Fe}(\text{CN})_6^{-3}$ and $\text{Fe}(\text{CN})_6^{-4}$ which are stable in dark conditions; however, in the presence of sunlight rapidly and extensively convert to highly toxic free HCN ^{32, 33}. For example, when buoyant fresh water discharge plumes float on more dense coastal marine waters³⁴ as is the case for SCL leachate.

3.4 Illegal/unauthorized dumping

SCL was used in road construction on public conservation land. Representative photographs follow, one sample collected (location E.)



Figure 8: SCL used in road construction, photographed sites

³¹ATSDR Toxicological Profile for Cyanide. 2006.

³² Standard Methods for the Examination of Water and Wastewater. American Public Health Association. 17th ed. page 4.21, 1989.

³³ Cyanides in the environment—analysis—problems and challenges. E. Jaszczak, Ż. Polkowska, S. Narkowicz, J. Namieśnik. Environ Sci Pollut Res Int. 2017; 24(19): 15929–15948.

³⁴NZAS Application for Discharge of Treated Effluent into Foveaux Strait AEE. p40, 1995



Figure 9: location A



Figure 10: location B



Figure 11: location C



Figure 12: location D



Figure 13: location E

PART 4 REGULATORY

Unlike other New Zealand legislation RMA has no provision for transferring liability in the event of insolvency or determining responsibility when potentially responsible parties span ownership, operation or financial interest.

4.1 Past practices

In a consent application NZAS claimed “Until quite recently, within the last 10 – 15 years, the most commonly used practice overseas was to dispose of the spent cathode linings by land filling. Other disposal methods have included ocean dumping and the use of the material as sea wall protection³⁵.” The aluminium smelter industry considers coastal marine area storage a passive treatment³⁶ whereby cyanide, fluoride and ammonia leach onto the shore and into the sea which explains why Rio Tinto stores hazardous waste as close as possible to the coastal marine area.

4.1.1 Local authority regulation: 1971 to 1990

Fifty years ago a local health department, pollution advisory board and smelter managers agreed on conditions of operation. Official Information Act requests to Environment Southland found over 85% of compliance records are missing³⁷ including a crucial independent investigatory report³⁸.

Earliest available records (1986) describe Clean Air and Water Rights Act “license conditions” for air quality, water discharge, experimental farm animal and pastoral herbage contamination.

Landfills operated without consents from 1971 to 1995.

Cyanide waste water plant operated without consents from 1970’s to 1990.

Smelter consents require neither testing nor limits of fluoride or cyanide in soil.

³⁵NZAS Application for Discharge of Treated Effluent into Foveaux Strait AEE. p20, 1995

³⁶Hazardous waste from aluminium industry. Thesis. S Parhi. p22, 2014

³⁷LGOIMA 2020/063 re: Tiwai Point Aluminium Smelter. Email Reller to Thayer. 30 NOV 2020

³⁸Investigation of Leachate Movement from the Spent Cathode Storage Pad. Woodward-Clyde. 1992

4.1.2 Local authority regulation: 1990 to 2021

The Resource Management Act 1991 shifted regulatory responsibility from Department of Health to Southland Regional Council latter called Environment Southland. In 1994, new 12 year consents were granted to NZAS with significant changes; replacing most limits and standards with guidelines – “the exceeding of which requires further investigation or other action without constituting a non compliance³⁹.” Eventually even many guidelines were eliminated⁴⁰.

4.2 Hazardous waste storage and disposal: conflict of interest

Both Invercargill City and Environment Southland are immersed in conflict of interest attempting to regulate large industrial employers⁴¹.

4.2.1 Invercargill City Council

In 2015 Invercargill City Council created a smelter zone in the district plan exempting open storage of 250,000 tons⁴² of hazardous waste from regulatory control; requiring neither license, consent, reporting, inspections nor any oversight on either temporary or permanent “storage” without provisions for public involvement, notification or submissions.

Invercargill City Council does not accept public complaints; instead, they tell members of the public to call Rio Tinto directly thus abdicating statutory responsibility⁴³.

³⁹NZAS Annual report. p5. 1994

⁴⁰NZAS Annual report. p 34. 2019

⁴¹Treasury report T2021/95. p163. 02 FEB 2021

⁴²Invercargill City District Plan. Part 4. Hazardous Substances appendix 9 page 49.

⁴³NZAS Annual report: minutes. p11, 1997

4.2.2 Environment Southland

Environment Southland does not regard excursions from consent conditions as significant; instead, they prefer “looking at the numbers and thinking: “that looks silly or that looks good⁴⁴.”

Environment Southland’s Coastal Plan allows permanent hazardous waste storage in the coastal marine area⁴⁵: a contravention of the Resource Management Act⁴⁶.

Environment Southland allows discharge of contaminants from land contaminated by a hazardous waste onto or into adjacent land: a permitted activity⁴⁷.

Air quality consents have no limiting conditions when monitoring for fluoride from:

- atmospheric deposition⁴⁸,
- contaminated pasture grass⁴⁹ or
- ambient air particulates⁵⁰.

Permit maximums, license limits and monitoring requirements with chronic non-compliance were abated and dismissed by local authorities. For example,

- vegetation contamination,
- discharge to surface water and
- cyanide in coastal marine area.

⁴⁴NZAS Annual report; minutes, p12, 1997

⁴⁵Southland’s Coastal Plan. section 18.9, 2013.

⁴⁶Resource Management Act. S15 (b)(1).

⁴⁷ Environment Southland. Water and Land Plan rule 46, 2018

⁴⁸NZAS Annual report. p 32. 2019

⁴⁹NZAS Annual report. p 34. 2019

⁵⁰NZAS Annual report. p 28. 2019

Vegetation contamination

year NZAS report

1992 *“exceptions being an increase in the vegetation fluoride in the area directly north of the smelter.”⁵¹”*

1993 *“increased vegetation fluoride north east of the smelter.”⁵²”*

Environment Southland removed condition.

<u>Condition</u>	<u>1986</u> ⁵³	<u>2012</u> ⁵⁴
fluoride in forage maximum contamination	40 mg/L ⁵⁵	<u>no limit</u>
<u>Reported</u>	84 mg/kg <u>non compliant</u>	639 mg/kg

⁵¹NZAS Annual report. p 4. 1992

⁵²NZAS Annual report. p 4. 1993

⁵³NZAS Annual report. p 41. 1986

⁵⁴NZAS Annual report. p 38. 2012

⁵⁵NZAS Annual report. p 5. 1986

Discharge to surface water

year NZAS report

1986 *"The material build up has now reached a stage where it is difficult to comply with the condition for the drain discharge fluoride concentration⁵⁶"*

1993 *"Problems continue with the north drain fluoride discharge.⁵⁷"*

1994 *"As with previous years the fluoride levels in the north storm water drain exceeded the permit standard⁵⁸."*

Environment Southland removed condition.

<u>Condition</u>	<u>1986⁵⁹</u>	<u>2019⁶⁰</u>
fluoride in drain water	10 mg/L	<u>no limit</u>
<u>Reported</u>	maximum contamination <u>non compliant</u> maximums not reported (annual average 10mg/L)	31 mg/L

⁵⁶NZAS Annual report. p 19. 1986

⁵⁷NZAS Annual report. p 4. 1993

⁵⁸NZAS Annual report. p 6. 1994

⁵⁹NZAS Annual report. p 5. 1986

⁶⁰NZAS quarterly report Q2. p 23. 2020

Cyanide in coastal marine area

A comparison of past conditions with most recent, reveals cancellation of conditions with chronic non-compliance.

year NZAS report

1991 *“high receiving water fluoride and intermittent high total cyanide concentrations occurred.”*⁶¹

1992 *“receiving water total cyanide condition of the permit was violated”*⁶²

1993 *“Investigation into remediation of ground water contaminated by cathode pad leachate and diesel continued”*⁶³

1994 *“at the maximum allowable discharge rate there is insufficient dilution available to meet the receiving seawater conditions in the present consent.”*⁶⁴

Environment Southland removed condition.

<u>Condition</u>	<u>1986</u> ⁶⁵	<u>1994</u> ⁶⁶	<u>2019</u> ⁶⁷
cyanide in sea water	0.05 mg/L	0.05 mg/L	<u>no limit</u>
maximum contamination (monthly average)	0.03 mg/L	0.13 mg/L	

NOTE: above >0.2 mg/l most fish rapidly die⁶⁸.

⁶¹NZAS Annual report. p 47. 1991

⁶²NZAS quarterly report. Q2. p 20. 1992

⁶³NZAS Annual report. p 4. 1993

⁶⁴NZAS Annual report. p 127. 1994

⁶⁵NZAS Annual report. p 47. 1986

⁶⁶NZAS Annual report. p 121. 1994

⁶⁷NZAS Annual report. p 56. 2019

⁶⁸ Ambient Water Quality Criteria for Cyanides. USEPA, pB3-4. 1980

4.3 SITE DESCRIPTION

A monolithic waste pile contains approximately 106,000 tons (42,500 m³) of SCL on a sandy open ocean coastal marine area, on a concrete pad covered with plastic. Another 75,000 tons in storage sheds, 58,000 tons exported for treatment and disposal leaving approximately 91,000 tons missing and unaccounted⁶⁹ (section *2.3 Waste quantities*.)

4.4 Storage, treatment and disposal

SCL leachate and operational waste water is batch treated to reduce cyanide concentrations to 20mg/L which is 2,900 times greater than the ANZECC trigger level of 0.007 mg/L⁷⁰. Based on dispersion studies, Bioresearchers, a consultant, concluded “collecting coastal water samples from the shoreline does not provide assessment of the effects of the discharge⁷¹.”

In 1993 NZAS promised to install a process called COMTOR, for treating SCL by the end of 1995⁷².

In 1994 NZAS again promised to have a COMTOR process operational by 1996⁷³.

In 1995, COMTOR was reported to being installed as part of a smelter upgrade⁷⁴.

There is no evidence COMTOR was either installed or operational at any time⁷⁵.

⁶⁹ Treasury. Identification and Evaluation of Remediation Options. p52, 2020

⁷⁰ <https://www.waterquality.gov.au/anz-guidelines/guideline-values/default/water-quality-toxicants/toxicants/cyanide-2000>

⁷¹ NZAS Application for Discharge of Treated Effluent into Foveaux Strait AEE. p48, 1995.

⁷² NZAS Annual report. p5. 1993.

⁷³ NZAS Annual report. p5, 1994

⁷⁴ NZAS Application for Discharge of Treated Effluent into Foveaux Strait AEE. p70, 1995.

⁷⁵ Treasury. Identification and Evaluation of Remediation Options. p44, 2020

Unconsented (two of three) discharges onto coastal marine area.



Figure 14: Unconsented discharge into coastal marine area

4.5 Containment

Several concrete containment pads laid on coastal sand dunes failed. In 1992 they were combined into one which also failed⁷⁶.



Figure 15 SCL pad land ward view

⁷⁶Treasury. Identification and Evaluation of Remediation Options. p50, 2020



Figure 16: SCL pad sea ward view

4.6 Off site contamination

Leachate contaminated with cyanide (up to 2,400 ppm), fluoride (up to 1,000 ppm) and ammonia (up to 1,500 ppm) drained into the coastal marine area continuously since shortly after inception in 1971.

The leachate plume contains approximately 1.2 million cubic meters of hazardous waste, 30% of which is stored in the coastal marine area⁷⁷, a prohibited activity⁷⁸.

Hazardous leachate contaminants are estimated to take 13 years to travel from front of Spent Cathode Pad to coastal marine area⁷⁹.

⁷⁷ Minenco Ltd. Spent Cathode Storage Pad Groundwater Remediation Studies. vol 2. Appendix 3, Three Dimensional Multiple Well Bore field Modelling, Tiwai Point Invercargill. Ground Search EES LTD. p3. 1995

⁷⁸ Resource Management Act. s15(b)(1)

⁷⁹ NZAS Spent Cathode Storage Pad Groundwater Remediation Studies and Evaluation of Pump and Treat Option, vol 1. Minenco Pty Limited. p32. 1995

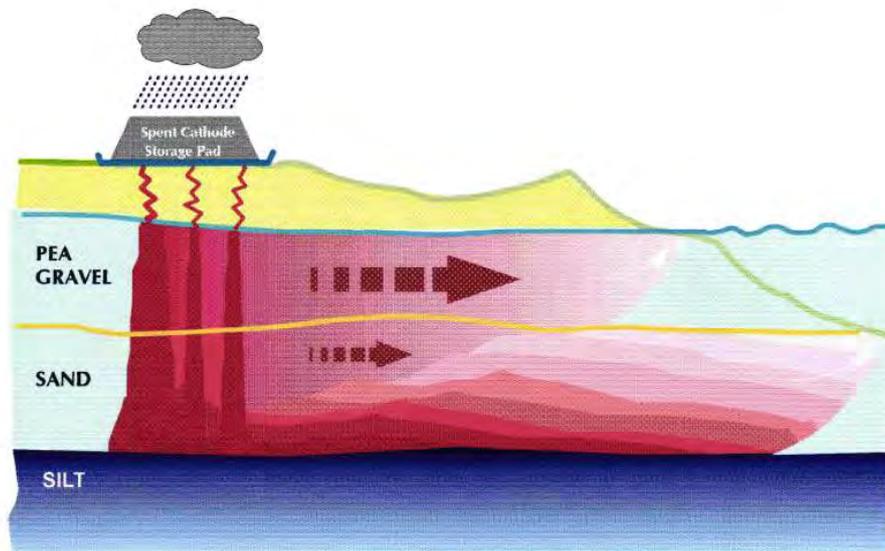


Figure 2. Conceptualisation of SCL Leachate Plume

Figure 17 from Minenco groundwater report⁸⁰

4.7 Remediation

A remedial investigation by NZAS's consultant, Minenco proposed an extractive well field to remove 70% of most contaminated material from leachate plume at a cost of several hundred thousand dollars which included capital expenditure and operational costs⁸¹.

NZAS proposed no remedial action.

Environment Southland concurred and approved⁸².

Rio Tinto's long term remedial action is limited to returning site to "natural landforms⁸³."

⁸⁰NZAS Spent Cathode Storage Pad Groundwater Remediation Studies and Evaluation of Pump and Treat Option, vol 1. Minenco Pty Limited. p13. 1995

⁸¹ Ibid. table 7, p52

⁸² Southland Regional Council to NZAS. letter 11 OCT 1995

⁸³ Treasury paper T2020/3731. 11 DEC 2020

4.8 Accessibility

Waste pile surrounded by 1.8m chain link fence with barb wire and signage.



Figure 18 SCL pad warning sign

PART 5 Natural resources information

5.1 Domestic and industrial water usage

Over 500 Rio Tinto staff use peninsula groundwater for washing and replenishment whilst working on pot lines operated at 970°C. Operationally water is used for cleaning anode burn off, cell dismantling and cooling castings⁸⁴.

5.2 Groundwater

Groundwater quality in the Tiwai Ground Water Management Zone is considered “sensitive” by MfE criteria⁸⁵. Groundwater is extensively utilised for industrial water supply consuming 22% of peninsular annual recharge. Up to 4,500 m³/day of ground water is abstracted and piped in support of smelter operations. Groundwater take from the sole source aquifer is tidally influenced and abstraction rated moderate⁸⁶.

Over 100 wells bored 5 to 60 m deep are used for water abstraction, cyanide leachate plume monitoring and diesel spill remediation⁸⁷.

From 2 to 4 m below ground level, water flows outward from peninsula’s center thru glacial out wash sand and gravel⁸⁸.

Abstracted water is discharged into from smelter’s north, south and west drains⁸⁹.

⁸⁴ NZAS Application for Discharge of Treated Effluent into Foveaux Strait AEE. p18-19, 1995

⁸⁵Ministry for the Environment. Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand. 2011

⁸⁶<https://www.es.govt.nz/environment/water/groundwater/groundwater-management-zones/tiwai>

⁸⁷GHD. NZAS Closure Preliminary Study Sampling and Analysis Quality Plan Summary. 2021

⁸⁸<https://www.es.govt.nz/environment/water/groundwater/groundwater-management-zones/tiwai>

⁸⁹ NZAS Discharge and Coastal Permit. Consent No:203373. 2006

5.3 Coastal waters and erosion

Antarctic ocean faces south, Awarua estuary north and Bluff harbour the western shore nearly forming a barrier island subject to rapid (4m/yr) coastal erosion and tsunami^{90, 91}.

Tiwai peninsula is part of Awarua–Waituna New Zealand's first Ramsar site and one of the largest remaining coastal wetlands in the country. The wetlands include extensive peat bog, swamp, coastal lagoon, estuary and stream habitats⁹².

Tiwai peninsula has very high ecological value; for example, rare examples of

- red tussock grassland at sea level,
- southern limit of the normally subalpine
 - Olearia nummularifolia a shrub
 - Aciphylla glaucescens a spear grass,
 - Discaria toumatou a thorny matagouri shrub,
- three species of lizard,
- rare flightless beetle,
- number of usual subalpine moth species,
- South Island fernbird and
- Australasian bittern⁹³.

⁹⁰Tiwai Point smelter toxic waste 'under considerable threat' if coast erosion trend continues. 17 JUN 21 RNZ

⁹¹ Department of Conservation. NZAS Annual DoC Compliance Report for PAC-14-18-08. 31 JUL 2020

⁹²<https://www.doc.govt.nz/our-work/freshwater-restoration/arawai-kakariki-wetland-restoration/sites/awarua-waituna-wetlands/about-awarua-waituna-wetlands/>

⁹³Department of Lands and Surveys to Ministry of Energy. Letter, 1986

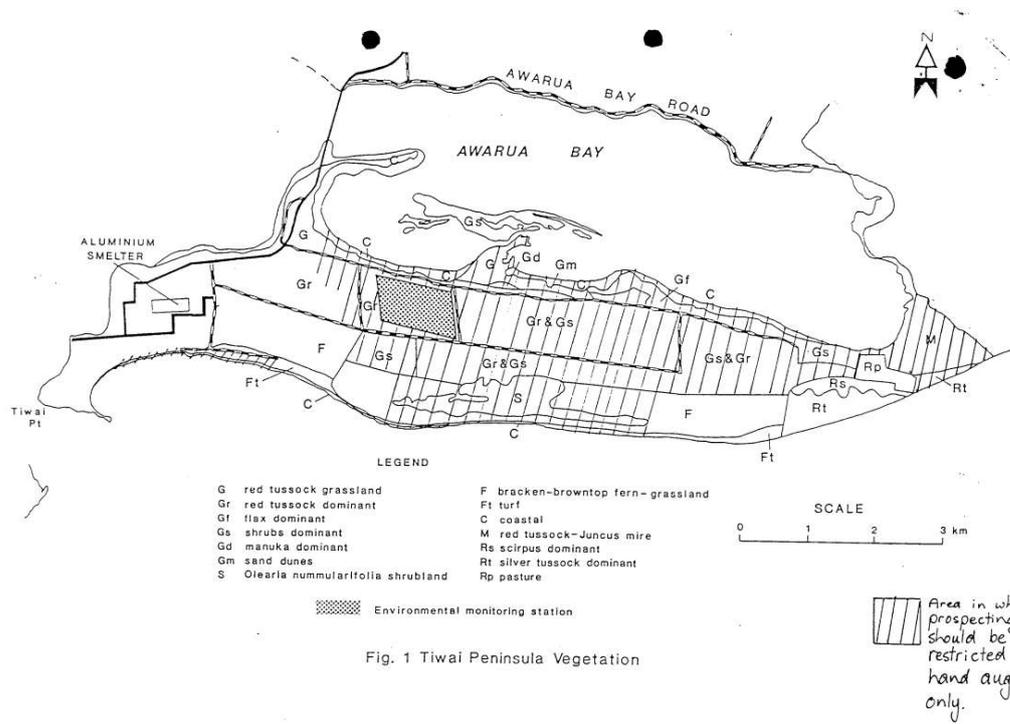


Fig. 1 Tiwai Peninsula Vegetation

Figure 19: from Department of Lands and Survey 1986

5.4 Locally threatened species



Figure 20 Large, striking green skink at risk of localised extinction⁹⁴

⁹⁴ Wildland Consultants personal communication. April 2021

PART 6 SAMPLE AND FIELD INFORMATION**6.1 Sampling**

Laboratory analysis used the same methods as published in “NZAS Closure Preliminary Study Sampling and Analysis Quality Plan Summary”

Sample Type: Soil		
Test	Method Description	Default Detection Limit
Non-Routine sample preparation. Air drying and 180 um sieving.	Air dried and sieved, <180 um fraction. Used for sample preparation.	-
Total Fluoride in solids alkaline fusion	Alkaline fusion of sample. Methods of Soil Analysis 2nd Edition, Pt2, 26-4.3.3.	-
Total Cyanide Distillation	Distillation of sample as received. APHA 4500-CN- C (modified) 23 rd ed. 2017.	-
Total Cyanide	Distillation, colorimetry. APHA 4500-CN- C (modified) 23 rd ed. 2017 & Skalar Method I295-004(+P14). ISO 14403:2012(E)	0.10 mg/kg dry wt
Total Fluoride in Solids	Ion selective electrode. Methods of Soil Analysis 2nd Edition, Pt2, 26-4.3.3. (modified)	20 mg/kg dry wt

SAMPLE TYPE: surface soil 0–75mm

NUMBER: four (4)

SENT TO: Hill Laboratories

Sample Type: Soil						
	Sample Name:	1A 08-Apr-2021 11:55 am	2B 08-Apr-2021 12:04 pm	3C 08-Apr-2021 12:21 pm	4D 08-Apr-2021 12:43 pm	
	Lab Number:	2583706.1	2583706.2	2583706.3	2583706.4	
Dry Matter	g/100g as rcvd	81	70	85	89	-
Total Cyanide*	mg/kg dry wt	0.21	0.52	0.42	0.30	-
Fluoride*	mg/kg dry wt	72	580	260	570	-

6.2 PHOTOGRAPHS AND MAPS

Sampling locations



Figure 21: sampling locations

1	11:55	46	35.869 S	168	24.460 E
2	12:04	46	35.823 S	168	24.456 E
3	12:21	46	35.782 S	168	24.457 E
4	12:43	46	35.761 S	168	24.476 E

Figure 23: sample number, collection time, LAT/LONG

PART 7 OWNER INFORMATION

7.1 Current owner/operator

Rio Tinto is an Anglo–Australian multinational company and ultimate holding company of New Zealand Aluminium Smelters⁹⁵. In addition to being largest aluminium producer in the world it's the second largest mining company.

Rio Tinto Ltd
Level 7, 360 Collins Street
Melbourne Victoria
Australia 3000

ultimate holding company of

New Zealand Aluminium Smelters
1530 Tiwai Road
Tiwai Point, Invercargill
New Zealand 9877

7.1.1 Financial status

Rio Tinto remains profitable and consistently generates positive cash flows from operations. Most recent financial statement reported 110% total shareholder returns⁹⁶. Tiwai is Rio Tinto's 5th most profitable, out of 13⁹⁷ smelters. Recent Meridian energy pricing discount increases profitability making it unlikely to close in near future⁹⁸.

⁹⁵<https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/156735>

⁹⁶Rio Tinto Annual financial report p6. 2020

⁹⁷Treasury report. T2020/3234. p8. 11 NOV 2020

⁹⁸Treasury report T2020/3344. 02 NOV 2020.

<u>Financial data</u>	<u>\$ NZD billion</u>
Gross sales revenue	64
Underlying profit before tax	17
Operating margin	28%

If NZAS declares bankrupt they are protected by New Zealand's Companies Act (s269) which shifts responsibility for environmental liability like waste and contamination to the Crown⁹⁹ by declaring onerous property *bona vacantia*¹⁰⁰.

7.1.2 Environmental and social responsibility

Claims of environmental devastation, human rights abuse and labour rights violation have been made around the world for decades. The following is a non inclusive list of current Rio Tinto transgressions¹⁰¹.

Panguna copper/gold mine

Bougainville In September 2020 more than 150 Bougainville people filed with Australian authorities that copper/gold mining waste causes adverse health effects on 12,000 people. Panguna, opened at the same time as Tiwai Pt, was the world's largest and most profitable mine until Rio Tinto conspired with the government to crush public criticism triggering a 10 year war with the loss of 20,000 civilian lives. Crushing the once prosperous indigenous culture into a spiral of dysfunction which continues to worsen even today despite considerable NZ aid.

⁹⁹Treasury report. T2020/3731, p14. 11 DEC 2020

¹⁰⁰ Meaning: ownerless property automatically becomes Crown land

¹⁰¹Treasury report T2020/3442. Appendix 3. 13 NOV 2020

- Rossing uranium mine
Swakopmund, Namibia Rio Tinto jointly operated a uranium mine with Iran. Crude safety standards blamed for worker illness and cancer since 1976.
- Borax mine
California, USA Recently in 2010 nearly 600 workers locked out in attempt to break union participation.
- Oyu tolgoi copper/gold mineralisation
Gobi desert, Mongolia Rio Tinto charged with making false and misleading financial statements, failure to recognize indigenous peoples, laid off 2,000 workers when asked to share revenue and exposes animal herds and people to extreme dust from poorly planned roading projects.
- Grasberg gold/copper mineralisation
West Papua, Indonesia World's largest gold and 2nd largest copper reserves discharged over 3.5b tons of waste into river valleys. Militarised mine security commits indiscriminate killings and disappearances of local people.
- Alma aluminium smelter
Quebec, Canada Rio Tinto locked out 800 workers in lieu of negotiating labour contracts.
- Brokman 4 iron mine
Pilbara, Australian One of the world's longest continually occupied habitations (46,000 years) was blown up under orders from Rio Tinto CEO sparking international outrage.

Kelian gold mine Borneo, Indonesia	About 500 indigenous Dayak people violently evicted with mass arrests and rapes. A hundred million tons of waste was dumped into local rivers.
Flambeau coper mine Wisconsin, USA	Federal judge ruled Rio Tinto violated Clean Water Act leaking toxic metals in local streams.

7.2 Transport, treatment and disposal: BASEL Convention¹⁰²

It is illegal to export hazardous waste out of New Zealand without a permit from EPA¹⁰³.

This information is a random audit of records from 2013. These records are required by the BASEL international convention on trans boundary movements of hazardous waste. Missing or withheld information is Environmental Protection Authority's discretion.

¹⁰²Basel convention is an international treaty to limit movement of hazardous waste between countries.

¹⁰³Exporting hazardous waste from New Zealand. EPA, p1. 2019.

7.2.1 Manifest tracking

REQUIREMENT

*Movement document for transboundary movements/shipments of waste*¹⁰⁴ form must be completed to meet international requirements for transporting hazardous waste internationally and managing its disposal.

EVIDENCE

All copies of “*Movement document for transboundary movements/shipments of waste*” show suspicious entries, irregularities and missing information.

Serial <u>shipments</u>	Non conforming <u>information</u>
6, 5, 4 ¹⁰⁵	Weight shipped exactly same as weight received to one part in one million, highly improbable; appears, waste not weighed at destination as required.
3 ¹⁰⁶	593.12 tons shipped; <u>only 39.17 tons received</u>
2 ¹⁰⁷	35.97 tons shipped; <u>no record of waste received</u>
1 ¹⁰⁸	1693.59 tons shipped; <u>no record of waste received</u>

¹⁰⁴ Ibid. p4

¹⁰⁵ EPA OIA ENQ-40074-R2F7G4. p306 to 308.

¹⁰⁶ Ibid. p309

¹⁰⁷ Ibid. p310

¹⁰⁸ Ibid. p313

7.2.2 Insurance

REQUIREMENT

Clear and specific insurance requirements are required for export approval¹⁰⁹.

EVIDENCE

All insurance information missing or redacted except for a cover page¹¹⁰.

7.2.3 Liability

REQUIREMENT

Exporter must specify who owns and takes responsibility for the waste, and when/to whom ownership and responsibility is transferred¹¹¹.

EVIDENCE

Responsibility agreement redacted¹¹². An unknown and unnamed co applicant's identity was redacted.

7.2.4 Disposal attempts in New Zealand

REQUIREMENT

Application requires justification¹¹³ for export based on treatment and disposal options not available in country.

EVIDENCE

NZAS statement on past practices¹¹⁴ shows disposal attempts at two cement kilns and gives total amounts of SCL needed to be processed. Chemical analysis of SCL waste with held as "trade secret"¹¹⁵.

¹⁰⁹Exporting hazardous waste from New Zealand. EPA. p5. 2019.

¹¹⁰EPA OIA ENQ-40074-R2F7G4. p160

¹¹¹Exporting hazardous waste from New Zealand. EPA. p5 to 6. 2019

¹¹²EPA OIA ENQ-40074-R2F7G4. p150

¹¹³ Application Form for a permit to export hazardous waste. EPA. p4, 2019

¹¹⁴EPA OIA ENQ-40074-R2F7G4. p222

¹¹⁵Ibid. p48

PART 8 PAST RESPONSE ACTIVITIES

These observations are limited to SCL waste management past and present practices.

8.1 Waste generation and handling: current practices

Cell liners are beaten from pots into pieces less than 1 meter in length to fine dust¹¹⁶.



Figure 24: spent cell liner removal, Australian SPL project photo

Disassembly and stock piling takes place on open ground, uncontained, uncontrolled without consent¹¹⁷.

¹¹⁶Australian Department of Energy and Environment. Spent pot lining project: feasibility of an agreement based approach to clear stockpiles. Final national summary report. p21, 2016

¹¹⁷OIA response. Invercargill City Council, 13 JAN 2021



Figure 25: Broken spent cell liner, Tiwai Pt. FEB 2021

A practice permitted¹¹⁸ by Invercargill City Council.

¹¹⁸Invercargill City District Plan. Part 4. Hazardous Substances appendix 9 p49.

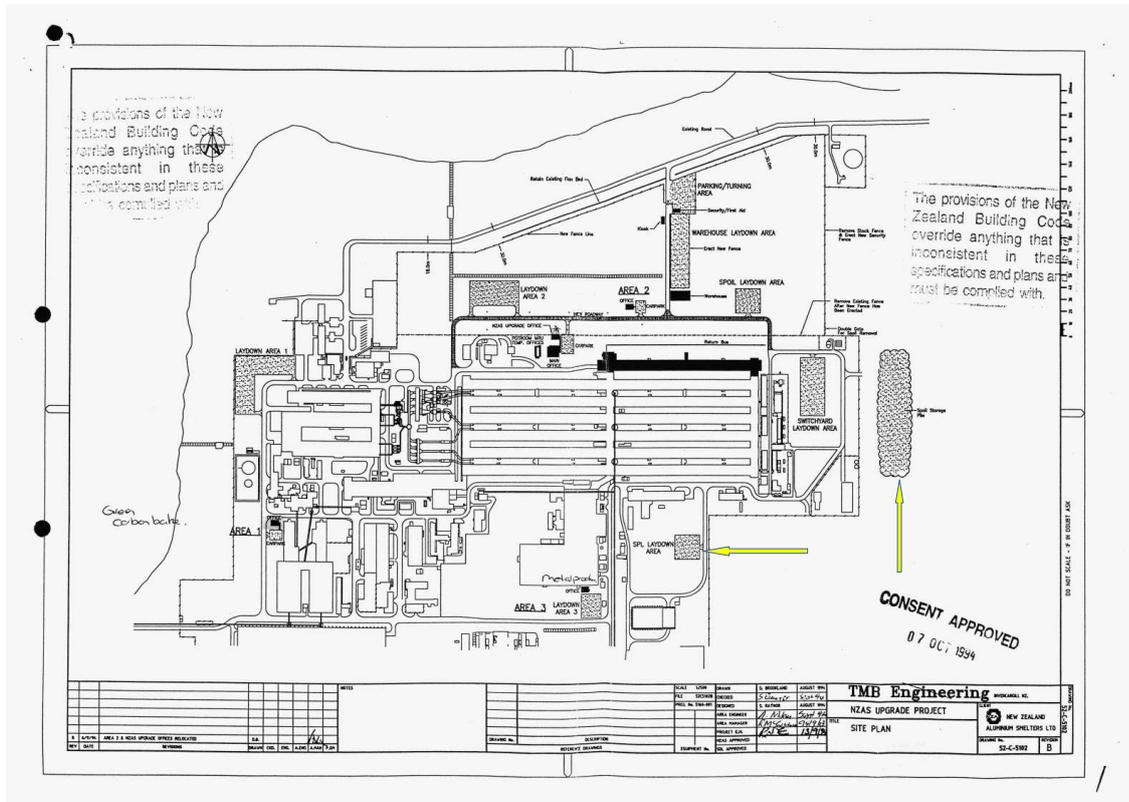


Figure 26: SCL open stockpile →

Broken spent cell lining is crushed and piled in storage sheds where SCL leachate breached both liner and floor containment systems. An unspecified amount of leachate was recovered¹¹⁹.

¹¹⁹Southland Regional Council memo SUBJECT: NZAS site visit confidential. 10 JUL 1995

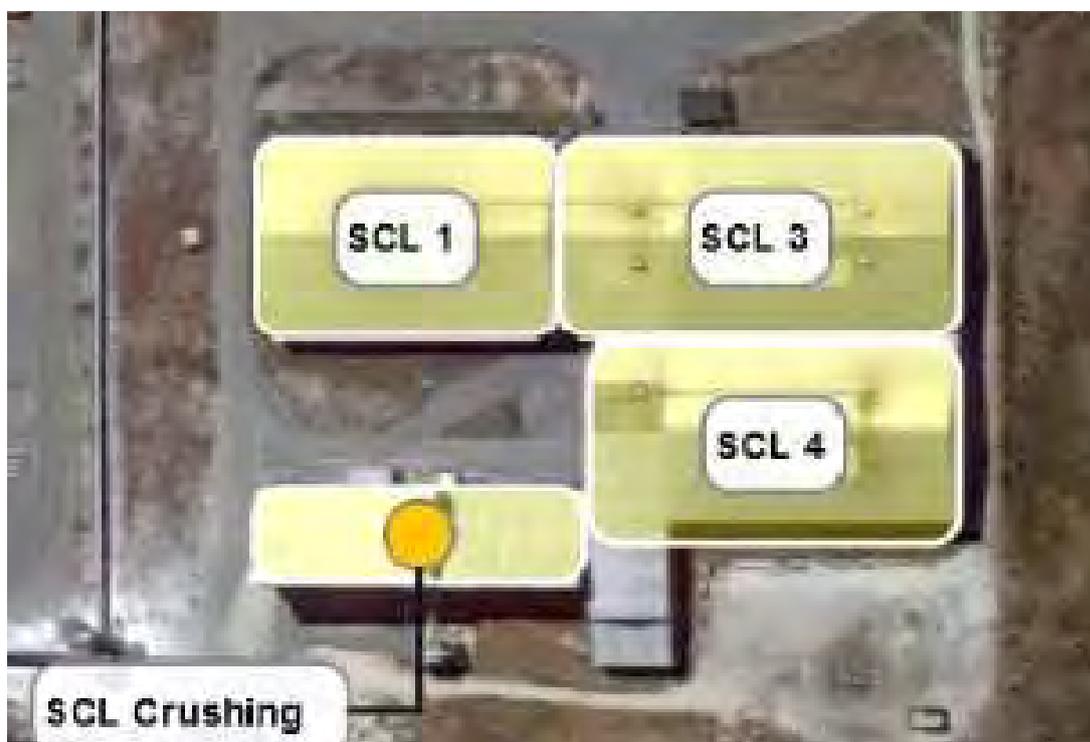


Figure 27 Spent Cell Liner crushing and storage sheds (SCL 1,3,4)¹²⁰

¹²⁰Ministry for the Environment OIA 2021/0058. p164. 2021

8.2 Waste storage: past practices

From 1971 to early 1990's SCL was dumped as close as possible to the marine coastal area, an open ocean rapidly eroding coastal marine area¹²¹. Leachate containing cyanide, fluoride and ammonia flowed across coastal marine area and into the sea; uncontained, untreated and unconsented¹²²



Figure 28 Waste water treatment plant and spent cell lining waste pile

Five years later a leachate collection, treatment and disposal system was built (upper left hand, above); however, drains and containment soon failed¹²³.

8.3 Waste removal

By mid 1990's the original waste storage pile (106,000 tons) was moved a few meters north to temporary adjacent site then uplifted back onto new pad/liner system at the original location¹²⁴, covered with plastic, fenced and sign posted.

¹²¹<https://www.rnz.co.nz/news/national/444921/tiwai-point-smelter-toxic-waste-under-considerable-threat-if-coast-erosion-trend-continues>

¹²² Southland Regional Council meeting minutes. 02 JUL 1995

¹²³ Treasury. Identification and Evaluation of Remediation Options. p51, 2020

¹²⁴ NZAS Application for Discharge of Treated Effluent into Foveaux Strait AEE. p20, 1995



Figure 29 Temporary and current SCL waste pad locations

8.4 Waste disposal

Adjacent paths and roads are built in part with SCL. See section 3.4 for photos and map.

Nearby, barren plots of land looking similar to the abandoned SCL pile were inspected.

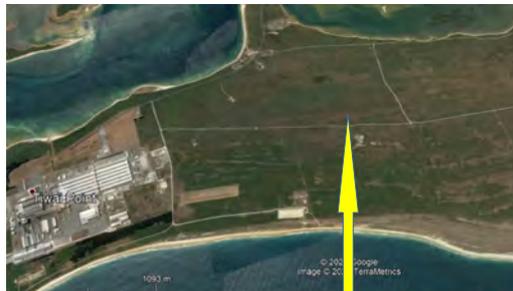


Figure 30: disturbed and barren land near SCL stock pile

PART 9 COMMUNICATIONS**Rio Tinto aluminium smelter, NZ
media links (DEC 2020 to JUL 2021)**

45. Government offered to pay millions to Rio Tinto

02 JUL 2020 RNZ

<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018802222/government-offered-to-pay-millions-to-rio-tinto>

44. Documents reveal government's multi-million offer to Rio Tinto despite ruling out a subsidy

02 JUL 2020 RNZ

<https://www.rnz.co.nz/news/national/445996/documents-reveal-government-s-multi-million-offer-to-rio-tinto-despite-ruling-out-a-subsidy>

43. Sea rapidly eroding southland beach close to toxic waste

17 JUN 21 RNZ

https://www.rnz.co.nz/audio/player?audio_id=2018800113

42. Tiwai Point smelter toxic waste 'under considerable threat' if coast erosion trend continues

17 JUN 21 RNZ

<https://www.rnz.co.nz/news/national/444921/tiwai-point-smelter-toxic-waste-under-considerable-threat-if-coast-erosion-trend-continues>

41. Maitua aluminium dross: Finance Minister defends agreeing to \$10m indemnity

14 JUN 21 RNZ

<https://www.rnz.co.nz/news/political/444690/maitua-aluminium-dross-finance-minister-defends-agreeing-to-10m-indemnity>

40. Tiwai Point posts \$366m after-tax loss

31 May 21 RNZ

<https://www.rnz.co.nz/business/443741/tiwai-point-posts-366m-after-tax-loss>
[nz/news/](https://www.rnz.co.nz/news/)

39. Environmentalist hails 'complete turnaround' from Rio Tinto

28 MAY 21 RNZ

https://www.rnz.co.nz/audio/player?audio_id=2018797295

38. Rio Tinto commitment to waste removal "a welcome U-turn" - David Parker

28 MAY 21 RNZ

https://www.rnz.co.nz/audio/player?audio_id=2018797317

37. Rio Tinto takes on some cost of Tiwai Pt clean-up, but \$200m of work still up in the air

28 May 21 RNZ

<https://www.rnz.co.nz/news/national/443538/rio-tinto-takes-on-some-cost-of-tiwai-pt-clean-up-but-200m-of-work-still-up-in-the-air>

36. Tiwai Point owner Rio Tinto criticised over gifts to Bluff school students

26 May 21 RNZ

<https://www.rnz.co.nz/news/ldr/443430/tiwai-point-owner-rio-tinto-criticised-over-gifts-to-bluff-school-students>

35. Tiwai Point monitoring bores under threat from coastal erosion

19 MAY 21 RNZ

<https://www.rnz.co.nz/news/national/442859/tiwai-point-monitoring-bores-under-threat-from-coastal-erosion>

34. Tiwai releases 25 years of environmental monitoring reports

19 May 21 Stuff

<https://www.stuff.co.nz/business/125168690/tiwai-releases-25-years-of-environmental-monitoring-reports>

33. Tiwai Point aluminium smelter chief executive Stew Hamilton resigns

07 May 21 RNZ

<https://www.rnz.co.nz/news/business/442043/tiwai-point-aluminium-smelter-chief-executive-stew-hamilton-resigns>

32. Tiwai Point eyed up for hydrogen production

05 MAY 21 RNZ

<https://www.rnz.co.nz/news/national/441832/tiwai-point-eyed-up-for-hydrogen-production>

31. Rio Tinto executive to meet ministers but Tiwai Pt smelter talks still on hold

04 MAY 21 RNZ

<https://www.rnz.co.nz/news/political/441737/rio-tinto-executive-to-meet-ministers-but-tiwai-pt-smelter-talks-still-on-hold>

30. Southland iwi over Tiwai Point aluminium smelter closure

03 MAY 21 RNZ

<https://www.rnz.co.nz/news/national/441682/rio-tinto-executive-meets-southland-iwi-over-tiwai-point-aluminium-smelter-closure>

29. More highly toxic waste reported at Tiwai Point Smelter

01 MAY 21 RNZ

<https://www.rnz.co.nz/news/national/441581/more-highly-toxic-waste-reported-at-tiwai-point-smelter>

28. Auditors raise estimates of waste at Tiwai Point, months after
Government questioned provision

30 APR 21 NZHerald

<https://www.nzherald.co.nz/business/auditors-raise-estimates-of-waste-at-tiwai-point-months-after-government-questioned-provision/VIWCXGIEIJKFWHTJL6UHHU5FKU/>

27. Tiwai Point smelter: Reports detail closure efforts, historical
contamination

22 APR 21 RNZ

<https://www.rnz.co.nz/news/national/441021/tiwai-point-smelter-reports-detail-closure-efforts-historical-contamination>

26. Southland iwi meet with officials over Tiwai Point aluminium smelter
clean-up for first time

18 APR 21 RNZ

<https://www.rnz.co.nz/news/national/440719/southland-iwi-meet-with-officials-over-tiwai-point-aluminium-smelter-clean-up-for-first-time>

25. Government considering law changes over Tiwai Pt

06 APR 21 RNZ

<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018790378/government-considering-law-changes-over-tiwai-pt>

24. Toxic waste buried at Tiwai Point aluminium smelter, former staff say

06 APR 21 RNZ

<https://www.rnz.co.nz/news/national/439872/toxic-waste-buried-at-tiwai-point-aluminium-smelter-former-staff-say>

23. Question No.5 – Environment

06 Apr 21 Oral Questions — Questions to Ministers

https://www.parliament.nz/en/pb/hansard-debates/rhr/document/HansS_20210406_050820000/5-question-no-5-environment

22. Govt looks at waste rules after smelter case

30 MAR 21 Newsroom

<https://www.newsroom.co.nz/minister-seeks-briefing-after-smelter-case>

21. No clean up deal in place between Rio Tinto and the Government

26 MAR 21 Stuff

<https://www.stuff.co.nz/national/124637859/no-clean-up-deal-in-place-between-rio-tinto-and-the-government>

20. NZ Aluminium Smelters Non-compliance

19 MAR 21 ECO

<https://mailchi.mp/eco.org.nz/tieke-eco-news-alerts-events-19-march-817984?e=13d6b62fc8>

19. Concerns over stockpile of hazardous waste at New Zealand aluminium smelter

09 MAR 21 *The Chemical Engineer*

<https://www.thechemicalengineer.com/news/concerns-over-stockpile-of-hazardous-waste-at-new-zealand-aluminium-smelter/>

18. NZAS looks to export toxic waste stockpiled at Tiwai Point

08 MAR 21 Stuff

<https://www.stuff.co.nz/environment/124469518/nzas-looks-to-export-toxic-waste-stockpiled-at-tiwai-point>

17. Tiwai Point smelter at risk of sea level rise

17 MAR 21 Radio New Zealand

<https://www.rnz.co.nz/national/programmes/middayreport/audio/2018787871/tiwai-point-smelter-at-risk-of-sea-level-rise>

16. Report details consequences of landfill of toxic waste at Tiwai Point

17 MAR 2021 Radio New Zealand

<https://www.rnz.co.nz/news/national/438550/report-details-consequences-of-landfill-of-toxic-waste-at-tiwai-point>

15. Govt still blind on Tiwai Pt contamination – Parker

17 MAR 2021 Radio New Zealand

<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018787835/govt-still-blind-on-tiwai-pt-contamination-parker>

14. Government warned Tiwai Pt smelter at extreme risk of sea level rise

17 MAR 2021 Radio New Zealand

<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018787821/government-warned-tiwai-pt-smelter-at-extreme-risk-of-sea-level-rise>

13. Tiwai smelter rejects reports Maitua toxic waste removal halted

16 MAR 2021 Radio New Zealand

<https://www.rnz.co.nz/news/national/438488/tiwai-smelter-rejects-reports-maitua-toxic-waste-removal-halted>

12. Tiwai Point: Govt sticking to 'bottom line' of proper remediation – Energy Minister Megan Woods

10 MAR 2020 Radio New Zealand

<https://www.rnz.co.nz/news/political/438045/tiwai-point-govt-sticking-to-bottom-line-of-proper-remediation-energy-minister-megan-woods>

11. Negotiations at Tiwai Pt on hold over remediation concerns

10 MAR 2020 Radio New Zealand

<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018786888/negotiations-at-tiwai-pt-on-hold-over-remediation-concerns>

10. Toxic waste from Tiwai Point smelter: Government halted talks over lack of plan

09 March 2021 Radio New Zealand

<https://www.rnz.co.nz/news/national/437976/toxic-waste-from-tiwai-point-smelter-government-halted-talks-over-lack-of-plan>

9. NZAS looks to export toxic waste stockpiled at Tiwai Point

08 MAR 2021 Stuff NZ

<https://www.stuff.co.nz/environment/124469518/nzas-looks-to-export-toxic-waste-stockpiled-at-tiwai-point>

8. Another 75,000 tonnes of toxic waste revealed to be stored near beach at Tiwai Point

08 MAR 21 Radio New Zealand

<https://www.rnz.co.nz/news/national/437867/another-75-000-tonnes-of-toxic-waste-revealed-to-be-stored-near-beach-at-tiwai-point>

7. Sort Out The Dross in Southland

23 FEB 21

<https://www.rnz.co.nz/national/programmes/lately/audio/2018784854/sort-out-the-dross-in-southland>

6. Environment Minister wants answers about Tiwai site

23 FEB 21 Stuff

<https://www.stuff.co.nz/national/124334576/environment-minister-wants-answers-about-tiwai-site>

5. Southland Regional Council ramps up its Tiwai Point checks

23 FEB 21 Radio New Zealand

<https://www.rnz.co.nz/national/programmes/middayreport/audio/2018784779/southland-regional-council-ramps-up-its-tiwai-point-checks>

4. Environment Minister David Parker 'frustrated' at Tiwai smelter, Work Safe to assess compliance

23 FEB 21 Radio New Zealand

<https://www.rnz.co.nz/news/political/436963/environment-minister-david-parker-frustrated-at-tiwai-smelter-worksafe-to-assess-compliance>

3. Smelter stockpiles 100,000 tonnes of hazardous waste near beach

22 FEB 21 Radio New Zealand

<https://www.rnz.co.nz/news/national/436877/smelter-stockpiles-100-000-tonnes-of-hazardous-waste-near-beach>

2. Government to spend \$300k to address operations at Tiwai Point

02 FEB 21 Radio New Zealand

<https://www.rnz.co.nz/news/political/435670/government-to-spend-300k-to-address-operations-at-tiwai-point>

1. Government doesn't want 'toxic waste site' when smelter shuts down

11 DEC 20 Radio New Zealand

<https://www.stuff.co.nz/national/123672514/government-doesnt-want-toxic-waste-site-when-smelter-shuts-down>