

Memorandum

To: Gwen Wilson – Group Manager, SHE and Community
Firm: CBH Resources Limited
From: David White / Carlo Zoppo
Date: 28 September 2009
Subject: Proposal for mobile crushing at Broken Hill

1 The Position

- 1.1 CBH would install a mobile crusher (which would be a ‘primary processing plant’ in the terms of clause 5(3) of Schedule 1 of the *State Environmental Planning Policy (Major Developments) 2005 (Major Projects SEPP)*.
- 1.2 The mobile plant would be installed on the surface at the existing underground mine (**Underground Mine**) which is proposed to recommence operations in the next few months.
- 1.3 CBH would seek approval of a mining operations plan (**MOP**) from the Minister for Mineral Resources to recommence underground mining relying on the clause 8K of the *Environmental Planning Assessment Regulation 2000 (Regulation)* which preserves the effect of section 74 of the *Mining Act 1992* for surface activities relating to mining until December 2010.
- 1.4 We are instructed that if the MOP application to conduct underground mining relying on section 74 is not approved then CBH will not proceed with the mobile plant.
- 1.5 CBH holds, we are instructed, a current and valid mining lease (**ML**) in respect of the Underground Mine and the surface above on which it is proposed to install and operate the Plant.
- 1.6 The mobile plant will be installed to process ore won from the Underground Mine, until a new and long term crushing plant would be approved, constructed and commissioned.
- 1.7 After primary process, ore from the Underground Mine at the Plant would be transported from Broken Hill to the CBH Endeavour Mine at Cobar. Tertiary treatment of the ore from the Underground Mine at Broken Hill would occur at the Endeavour mine in Cobar.

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- 1.8 The mobile crushing plant and its associated stock piles will not disturb a surface area of more than 4 hectares of land.
- 1.9 The construction of the mobile crushing plant will not involve a capital expenditure of more than \$30 million and its operation will not employ more than 100 people;
- 1.10 Approval for the long term crushing plant is being sought in a new Part 3A Major Project Application (MPA), approval for which is expected by December 2010 and which will approve the Underground Mine and all of the associated surface and other facilities for the operation of the mine, including a crusher.
- 1.11 Approval, construction and commissioning of the new crushing facility will take about 12 months resulting in it being available for the combined operation of the mine in about December 2011 or in two years time. This will be some 12 months after the expiration of the clause 8K relief period in respect of the operation of section 74 Mining Act.

2 Instructions

- 2.1 CBH seeks advice as to the approvals it needs to authorise:
 - (a) installation of the mobile crushing plant as soon as possible;
 - (b) primary treatment of the ore in a mobile plant for up to two years until the Part 3A Major Project Approval is granted and the permanent plant constructed and commissioned;
 - (c) transport of the primary treated ore from Broken Hill to the Endeavour mine; and

until the granting of the MPA approval and the commissioning of the permanent plant at Broken Hill.

- 2.2 We will refer to the construction [(a) above] and operation [(b) above] and transport [(c) above] in the term "Plant".
- 2.3 We note that this advice is limited to the operations of CBH at the Broken Hill mine and the movement of processed ore from the mine.

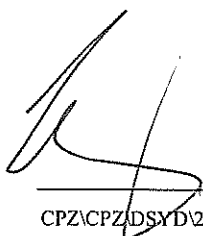


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- 2.4 Advice is also sought as to whether any approval required for the Plant is:
- (a) under Part 4 of the *Environmental Planning and Assessment Act 1979* ('EPA Act') and therefore be made to the Council as consent authority; or whether it is,
 - (b) under Part 3A of the EPA Act as a major project under the Major projects SEPP, for which the Minister for Planning would be the approval body.

3 Approval for Development

- 3.1 Development may not be conducted without either approval or an exemption for the need for approval under or pursuant to the EPA Act or otherwise at law.
- 3.2 When that approval is held the development must be conducted generally as required by the approval or within the exemption.
- 3.3 Approval is obtained by either obtaining:
- (a) development consent under Part 4 of the EPA Act where the Council is the consent authority; or
 - (b) as a project approval under Part 3A of the EPA Act if the development for which approval is sought is a 'project' under the provisions of the Major Projects SEPP.
- 3.4 Approval for the plant will be a development consent under Part 4 EPA Act unless the development is a major project.
- 3.5 Clause 6 (1) of the Major Projects SEPP provides that
- "Development that, in the opinion of the Minister, is development of a kind: (a) that is described in Schedule 1 or 2; or ... (b) ... or (c) ... is declared to be a project to which Part 3A of the Act applies".
- 3.6 Item 5(1) of Schedule 1 of the Major Projects SEPP provides that
- "Development for the purposes of mining that (a) ... (b) ... (c) has a capital investment value of more than \$30 million or employs 100 or more people".
- 3.7 Item 5(3) of Schedule 1 of the Major Projects SEPP provides that
- "Development for the purpose of mining related works (including primary processing plants or facilities for storage, loading or transporting any mineral, ore or waste material) that: (a) is ancillary to or an extension of another Part 3A project, or (b) has a capital investment value of more than \$30 million or employs 100 or more people".



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3.8 Section 75B EPA Act provides that

“If only part of any development is a project to which this part applies, the other parts of the development are (subject to subsection 4)) taken to be a project to which this Part applies. The development is to be dealt with under this Part as a single project”.

3.9 If what CBH seeks approval for is not a ‘project’, the appropriate approval will be for development consent from the Council under Part 4 of the EPA Act which may be either for:

- (a) ‘designated development’; or
- (b) non designated development.

3.10 Part 4 development is ‘designated development’ if it is of a category identified in Schedule 3 to the Regulations. If that is the case the development application to be made to the Council must be accompanied by an ‘environmental impact statement’ the formal requirements and process for which is set out in the EPA Act and the Regulations.

3.11 As the area to be disturbed is less than 4 hectares the Plant will not be designated development, an environmental impact statement would not be required. Any application to the Council for development consent would be supported by a statement of environmental effects.

4 The Underground Mine

4.1 The Underground Mine is development of a type that would normally require approval under the EPA Act.

4.2 However the Underground Mine is the subject of an exemption from the need for planning approval under the EPA Act by virtue of the application of section 74 of the Mining Act which provides that

“(1) While a mining lease has effect: (a) nothing in, or done under, the Environmental Planning and Assessment Act 1979 or an environmental planning instrument operates so as to prevent the holder of the mining lease from carrying on mining operations in the mining area; and that (b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the holder of the mining lease.”

4.3 Section 74 has been repealed but its effect in respect of underground mining is preserved until December 2010 by the terms of clause 8K of the Regulation. The exemption as to surface mining afforded by the same clause expired in August 2009.



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5 Is the Plant a Project to which Part 3A applies?

- 5.1 The Underground Mine falls within the definition of “mining” defined in Schedule 1 of the *State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)*.
- 5.2 Activities in Schedule 1 are declared in the Major Development SEPP to be projects to which Part 3A of the EPA Act applies¹.
- 5.3 The Underground Mine has, we are instructed, a capital investment of more than \$30 million or employs more than 100 people and would be, subject to the application of section 74 Mining Act (refer to clause 8K of the Regulation), a major project requiring approval from the Minister under Part 3A of the EPA Act².
- 5.4 The Plant, having a capital value of less than \$30 million and employing less than 100 people, would only be a Part 3A major project if it is development:
- (a) for the purpose of mining-related works that is ancillary to or an extension of another Part 3A project; or
 - (b) that has a capital investment value of more than \$30 million or employs more than 100 people³.
- 5.5 We are instructed that the Plant would not have a capital investment value of more than \$30 million and would not employ more than 100 people and therefore does not meet either of the thresholds in 5.4(b).
- 5.6 The Plant is ancillary to the Underground Mine, which would ordinarily be a Project to which Part 3A applies, and therefore the Plant would ordinarily fall within the class of projects in clause 5 of the Major Development SEPP that are declared to be projects that require approval under Part 3A.
- 5.7 However, the continued operation of section 74 of the Mining Act results in approval not being required under the EPA Act until December 2010 resulting in the Underground Mine not being a ‘project’ to which Part 3A applies until December 2010 when that will become the case.
- 5.8 The result is that, until December 2010, the Plant is not a ‘project’ as it is not within the terms of either Item 5 of Schedule 1 to the Major Projects SEPP or section 75B(3) of the EPA Act until December 2010. Following that date it will become a ‘project’ to which Part 3A of the EPA Act applies as, at that

¹ Clause 6(1)(a) Major Project SEPP; section 75B(1) EPA Act

² Section 75D(1) EPA Act

³ Clause 5, Schedule 1 Major Development SEPP

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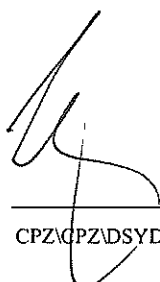
time, the Underground mine will become a 'project' itself and each of Item 5 and section 75B(3) will apply to the Plant.

6 Proposed development is not designated development

The Proposal is not Designated Development for the purposes of the EPA Act as the works involved in the Proposal will not disturb a total surface area of more than 4 hectares of land.

7 Conclusions and recommendations

- 7.1 The Proposal is not presently a 'project' under the Major Development SEPP.
- 7.2 The Proposal will become a Project when the Underground Mine becomes a 'project'.
- 7.3 The Underground Mine will become a 'project' on the first to occur of:
 - (a) the grant of a MP Approval; or
 - (b) 31 December 2010
- 7.4 Until the Proposal becomes a 'project' the appropriate approval path is a development application to the Council for development consent under Part 4 of the EPA Act.
- 7.5 The development application to the Council under Part 4 of the EPA Act is not for 'designated development' and will need to be supported by a statement of environmental effects.
- 7.6 The receipt and treatment of the primary treated ore at the Endeavour Mine will require an approval.
- 7.7 The Proposal can, until it becomes a 'project', be assessed and determined by the Council in accordance with its applicable environmental planning instruments and Part 4 of the EPA Act.
- 7.8 The path will be facilitated by:
 - (a) limiting the duration of the development consent to the time when the new Part 3A approval is issued;
 - (b) amending the existing Part 3A application to include the continuation of the use of the mobile plant and the exercise of the Plant under that approval until the permanent plant is constructed and commissioned;

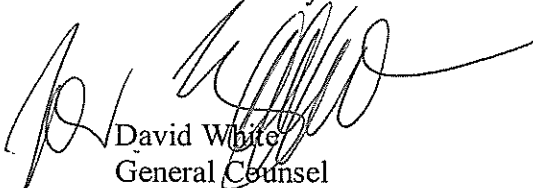


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- (c) committing to surrender the Council development consent when the time in 7.8(b) above arrives; and
- (d) communicating with the Department as to the strategy.

We are happy to discuss any aspect of this memo.

Yours faithfully



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General Counsel

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