IN THE FEDERAL COURT OF AUSTRALIA)
VICTORIA DISTRICT REGISTRY)
GENERAL DIVISION)

No. VID 1641 of 2004

BHP BILLITON IRON ORE PTY LTD (ACN 008 700 981)

Applicant

and

THE NATIONAL COMPETITION COUNCIL

First Respondent

and

FORTESCUE METALS GROUP LIMITED (ABN 57 002 594 872)

Second Respondent

AFFIDAVIT

I, **PHILLIP ANTHONY PRICE** of 62 Dunrossil Place, Wembley Downs, Perth, in the State of Western Australia, say on oath:

1. I refer to my previous affidavits filed in this proceeding, sworn on 5 and 7 July 2005.

2. In this affidavit, I describe and explain the impact that a third party's use of BHPBIO's Newman rail track is likely to have on BHPBIO's iron ore operations in the Pilbara, and the types of costs that are likely to be imposed on BHPBIO by reason of those impacts. In order to do that, I first describe and explain:

   (a) the role of the Integrated Planning Group in the planning of BHPBIO's operations;

   (b) the extent of BHPBIO's use of the Newman rail line in its current operations; and

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(c) BHPBIO's planned expansions and upgrades of its mine, rail and port operations, and the nature, and extent, of BHPBIO's proposed use of the Mount Newman and Goldsworthy rail lines operations going forward.

At the end of the affidavit, I also comment on certain matters stated in the Affidavit of Julian Robin Paul Tapp sworn 29 August 2005.

3. I have read the affidavit of Robert Ian Ridley sworn 22 December 2005 and the affidavit of Rodney Tytler Hoare sworn on 22 December 2005. I agree with the matters stated in those affidavits.

The Integrated Planning Group

4. As stated in paragraph 6 of my affidavit sworn 7 July 2005, the Integrated Planning Group within BHPBIO was established to improve co-ordination between the mine, rail and port operations, and to obtain greater efficiencies within, and to optimise the performance of, BHPBIO's operations.

5. The Integrated Planning group continually monitors and examines each of the mine, rail and port operations to ensure that they are being utilised in an optimal manner from a total system perspective, thereby maximising total system throughput or capability, given the existing available infrastructure across each of those operations. This requires the ongoing monitoring, assessment and formulation of any response to any constraints within any of the mine, rail or port systems. This process involves:

(a) responding to unplanned events in order to optimise overall production capability;

(b) managing the short and medium term production planning processes to take into account planned constraints (eg planned plant shutdowns), with a view to minimising the impacts from such constraints on the system as a whole. For example, these processes enable BHPBIO to co-ordinate various planned maintenance activities across the mine, rail and port systems to optimise overall production capability; and

(c) for the purposes of long term planning, liaising with BHPBIO's Asset Development Projects (**ADP**) to assess the best capital investment options across each of the mine, rail and port operations, so as to optimise overall production capability.

6. Historically, varying amounts of latent capacity were present in each of the mine, rail and port operations. In my view, this was due, in part, to the fact that each of the operations was operated so as to maximise the efficiency of that operation, but without seeking to do so in the context of optimising total system efficiency. In particular, mine stockpiling and train loading, rail operations and port car dumping, stacking, reclaiming and shiploading operations were not operated and planned with the object of maximising total production capability at the minimum possible capital expense.

7. The Integrated Planning group was created to ensure that operational decisions within the mine, rail and port operations reflect the optimal outcome from a total system perspective. The Integrated Planning group's role involves:

   (a) the planning of production for BHPBIO's mine, rail and port operations to ensure that they operate in the optimal manner; and

   (b) in the case of expansion planning, the design and implementation of expansion works so as to avoid the unnecessary installation of latent (unused) capacity in any of the mine, rail or port operations.

8. While all expansion projects are ultimately designed with a view to ensuring total system balance (ie no unnecessary latent capacity within any of the separate systems), given the long term nature of expansion planning, it is inevitable that some capability imbalance will exist from time to time between the capabilities of each of the mine, rail and port operations, until subsequent planned expansion in other operations is able to utilise that capability.

9. BHPBIO is continually increasing its understanding of its integrated operations and how to optimise its overall capability. Through this process, BHPBIO has gained a greater understanding of the complexity of the interrelationships between its mine, rail and port operations. Because of this complexity, since about 1992 BHPBIO has engaged Rod Hoare to conduct computer simulation modelling of BHPBIO's operations. Up until 1999, Rod Hoare undertook this work as an employee of Fluor Daniel. Since then, this work has been undertaken by TSG Consulting (**TSG**), of which Rod Hoare is the principal. Rod Hoare has the primary responsibility for undertaking this modelling work. The simulation model is regularly verified against actual operational outcomes and covers all aspects of

BHPBIO's operations, from train loading at the mines through to ship loading at Port Hedland. It also considers vessel arrival patterns and cargo combinations.

10. The Integrated Planning Group uses a combination of simulation modelling and practical experiments to assess the likely outcomes of operational improvement and expansion proposals. In some cases, modelling will be used to predict the effect of proposed improvements or to identify potential improvements. In other cases, once improvements have been made in practice, the results observed are fed back into the simulation model for the ongoing validation of the model. In this way, the assumptions underlying the simulation model are tested and adjusted.

Current Operation and Capability of BHPBIO's Mine, Rail and Port Operations

Integrated operations

11. In assessing the capability of BHPBIO's rail line, it is necessary to recognise that BHPBIO's rail operations are part of a series of interdependent activities directed towards producing iron ore products of a specific grade and quality and in particular quantities for shipment from Port Hedland. At paragraphs 43 to 163 of my affidavit of 7 July 2005, I set out a detailed explanation of the activities involved in the production of finished iron ore products for shipping, and the manner in which BHPBIO's rail system is operated as part of those activities. Rail system planning and operations are directed towards maximising BHPBIO's overall efficiency and productive capability.

12. A critical component of the efficient management of BHPBIO's operations is the ability for each of the mine, port and rail operations to be managed so as to respond to variabilities which occur within each of the other operations. Because BHPBIO controls each of the mine, rail and port operations, it is able to make operating and planning decisions for the benefit of BHPBIO's overall production of iron ore.

13. It will often be the case that the optimisation of one of the mine, rail or port operations does not bring about total system optimisation. For example, while it might be optimal for a given mine to operate constantly (thereby ensuring efficient operation of the mine), if the port is unable to handle and process the ore being produced by that mine, then, from a system perspective, it might be optimal to divert rail operations away from that mine to other locations. During that period, it may also be optimal to bring forward necessary mine

maintenance. Conversely, if ore from that port is required to satisfy demand, it might be optimal to defer mine maintenance until a later point in time.

14. As discussed above, it is precisely for the reason that optimal total system planning will often involve making decisions contrary to the independent optimisation of the separate mine, rail and port operations, that the Integrated Planning Group was created. As discussed in more detail below, BHPBIO's operations are the subject of ongoing planning and development, in order to maximise their efficiency and total system throughput.

Current capability

15. The Newman rail line is currently being operated by BHPBIO at its maximum capability. By capability, I mean the maximum throughput of iron ore that BHPBIO is able to move between its mining and port operations using the rail line (assuming current infrastructure) to produce iron ore products of a required grade and quantity for shipping, having regard to all of the operational constraints that affect the rail line.

16. I was involved in determining the current budget for BHPBIO in the financial year ending June 2006 (YEJ06). The annual budget process commences in about September each year, and concludes in February in the following calendar year in respect of the financial year commencing on 1 July of that year.

17. An outline of BHPBIO's budget process for YEJ07 is set out in Confidential Annexure "**PAP-1 CONFIDENTIAL**". The process was substantially the same for YEJ06. It can be seen from the outline that the current budget process involves the following steps:

    (a) **Updating the 18 month plan**

    BHPBIO's Integrated Planning Group is responsible for maintaining a rolling 18 month operations plan which reflects at a high level, among other things, total system production capability for the following 18 months. This plan is typically updated each month, and is reviewed in September for the purposes of the budget process

    (b) **Testing the conclusions in the plan and finalising the Letter of Intent**

To meet BHP Billiton's internal reporting obligations, BHPBIO is required to provide an indication of its anticipated production volumes and revenue, on or about December each year. This document is known as the Letter of Intent (**LOI**).

Prior to receiving interim LOI approval in early October from the Vice Presidents of Commercial and Marketing and the Operations Committee (**OpsComm**, which comprises the 3 Vice Presidents of Mine, Rail and Port, and Integrated Planning), the plan is subjected to an iterative analysis across a number of groups within BHPBIO. In particular, input is received from:

(i) Integrated Planning group, in relation to the incorporation of the most up to date throughput information. This may also include, where necessary, validation of this data against TSG's model;

(ii) Resource and short term mine planning group, in relation to the alignment of throughput calculations with long and short term mine plans. Further detail in relation to the mine planing process is set out at paragraphs 17 – 18 and Confidential paragraphs 119 – 135 of the affidavit of Terrence John Howard sworn on 6 July 2005;

(iii) Mine, Rail and Port Operations groups, in relation to the verification of the various throughput assumptions made in the plan;

(iv) ADP group, in relation to capacity improvements. This information has a bearing both on the anticipated future capability following the commissioning of such improvements and also on the impact of those works on throughput capability during the construction stage; and

(v) Marketing group, in relation to market demand for various products and grades. This information is also aligned with the long term and short term mine plans.

This process is fully iterative, as each group's input has a direct bearing on the ultimate capability of the system and on the accuracy of the plan.

(c) **Interim approval of LOI production volumes**

In or about early November, Vice Presidents of Commercial and Marketing and the OpsComm provide interim approval of projected production volumes for the following year, based on the production capability reflected in the plan.

(d) **Short term mine planning**

Once the plan has been approved, it is necessary for the short term mine planning to take place, in order to determine what steps are necessary to achieve the production levels and grades contained in the plan. This involves assessing mine inventories and calculating the level of railing necessary from each Orebody in order to meet the required grade and product mix. This process is a pre-requisite for the setting of budget production volumes, and while it is not completed in time for the finalisation of the LOI, its finalisation is a critical element in the preparation of the budget production volumes.

(e) **Final approval of LOI production volumes**

Following a further review of the plan by Integrated Planning and Finance, the LOI production volumes are approved by the Vice Presidents of Commercial and Marketing and the OpsComm at the end of November/early December.

(f) **Budget production volumes**

From late November until mid-January, a range of processes occur in relation to the finalising of the budget production volumes. These production volumes differ from those in the LOI as the budget volumes fully incorporate both the final results of the short term mine planning process and any new information not available at the time of the finalisation of the LOI.

These processes include a repeat of the iterative process referred to at sub-paragraph (b) above, and detailed short term mine planning and review by Integrated Planning and Finance. This process culminates in the final approval of the budget production volumes by the Vice Presidents of Commercial and Marketing and the OpsComm in January.

18. As part of the YEJ06 budget process, a document called the "Annualised capability model performance" was prepared. The final version of this document (Version 6 dated 23 February 2005) is attached as Confidential Annexure "**PAP-2 CONFIDENTIAL**". The document contains BHPBIO's budgetary forecast of the productive capability of each of the mine, rail and port operations for the budget year, based on various approved operating assumptions. The capability model shows that for YEJ06, BHPBIO forecast that the mine, rail and port operations would have the capabilities summarised at Confidential Annexure "**PAP-3 CONFIDENTIAL**".

19. As shown in Confidential Annexure PAP-3 CONFIDENTIAL, the YEJ06 budget forecast that the rail system would have the lowest capability of the mine, rail and port system for this financial year, thus representing the system constraint.

The BOSS Study

20. Due to system performance issues, maintenance requirements and current expansion works, BHPBIO's rail operations have been unable to meet budgeted tonnages for the financial year to date.

21. While a range of capital expansion works have recently been approved by BHP Billiton to increase system throughput, capital expansion works generally take around 2 years to commission following approval, and accordingly, these works will not provide any short term relief to the congestion on BHPBIO's rail operations and the constraint to BHPBIO's production capability.

22. As a result, BHPBIO recently examined whether or not it was able to improve the efficiency of its current operations (and increase production) given its existing infrastructure, and in particular, whether abandoning its rail schedule for sequenced departures on a "run when ready" basis would improve total system throughput capability. This study was called "BOSS", being an acronym for "Benefits of Sequential versus Scheduled". In undertaking this study, key aspects of the mine, rail and port operations were investigated, and in particular, the point at which the rail interfaced with the port.

23. Following completion of the study, it became evident that:

(a) two of the port car dumpers were being under-utilised, and periods averaging up to 4 hours a day existed within which those car dumpers were not utilised; and

(b) trains often remained unutilised at the mines and the port for varying periods of time following the completion of loading and dumping ore respectively, until they were subsequently dispatched from the mines and port.

24. The train "waiting time" at the port was identified by BHPBIO as a potential source of system underutilisation.

25. As a result of these findings, BHPBIO undertook a further assessment of the measures that could be implemented to reduce the port car dumper "idle time", thereby improving the car dumper efficiency and the system capability. BHPBIO's preliminary conclusion was that this could be achieved if the trains were able to depart from the port or mine as soon as they were ready to depart (essentially abandoning the concept of the existing rail schedule).

26. This concept was modelled by TSG, with the model indicating that this approach would result in a net increase in the system capability through the improved utilisation of the port car dumpers, as long as certain changes were implemented to BHPBIO's operational methodology. BHPBIO also undertook extensive planning to determine the necessary changes to its methodology in order to enable this approach to be implemented.

27. The essence of this new approach is that trains will depart the mine and the port as soon as they are able to, but that they must still adhere to a predetermined sequence to ensure that product proportions and grade requirements are achieved. BHPBIO implemented a trial of this new "sequence" approach in the week commencing 17 November 2005. The trial will be reviewed in January 2006, and if the results are inconclusive the trial may be extended.

Planned Expansions and Upgrades

28. This section of my affidavit describes and explains the expansions and upgrades to BHPBIO's mine, rail and port operations that have been approved in recent years and are currently being implemented, and further expansions and upgrades that are currently being studied or considered, but have not been approved. The section commences with a brief description of BHP Billiton's capital expenditure approval process.

Project approval process

29. Prior to being finalised and submitted to the board for approval, each of BHPBIO's major capital expenditure projects (ie projects with a cost of $US 100 million or greater, BHP Billiton share) has to progress through BHP Billiton's internal review process. Broadly speaking, this process involves the following steps:

    (a) *Conceptual study*

        This is the very first phase of the approvals process and involves, in the case of considering an expansion, canvassing all relevant expansion options, with a view to selecting a discrete number of options to progress to the pre-feasibility study phase, for examination and review in greater detail.

    (b) *Pre-feasibility*

        This phase of the process involves assessing all of the options that progressed from the conceptual stage, and selecting one option to progress to the feasibility study phase.

    (c) *Feasibility*

        This phase involves the further assessment of the selected option. If the outcome of this stage is to recommend that the project progresses, it will then proceed through various internal approval processes.

    (d) *Board approval*

        After all internal approvals have been obtained the proposal is submitted to the board for its approval

30. Each of phases (a) to (c) also involves a "toll-gating" process, whereby an internal review team, comprising a variety of operational and business representatives not directly involved in the proposal, evaluates the study according to a range of pre-determined criteria.

31. The review team then makes a recommendation as to whether or not the study should progress to the next phase in the approvals process. Sometimes, studies are approved

conditionally, depending on the nature of the study in question and of any concerns held by the review panel.

32. It can take between 6 and 12 months (or more) for a project to proceed from each of the phases described above to the next (including the toll-gating process).

33. The precise approvals process varies from project to project, depending on the value of the project (or where it's a joint venture, the value of BHP Billiton's share in the project). However, for projects with a cost in excess of $US100 million (BHP Billiton's share), the full process set out above is required.

Achieving output equivalent to installed capability

34. Once any expansion project has been completed, any new capability provided by the newly constructed works is known as installed infrastructure capability. This means, that the infrastructure will ultimately be capable of achieving an output level to match that capability. However, there is always a period between the completion of any construction works and the achievement of output equivalent to the installed capability ("ramp up" period). This time period may be quite lengthy.

35. Once the output capability matches the installed infrastructure capability, then whether or not such output is actually utilised depends on market demand and BHPBIO's ability to sell the additional iron ore products capable of being produced with the new capacity. As the precise timing and extent of any "ramp up" may be uncertain, unless otherwise indicated, all references to expansion projects and production capability below refer to the timing of the completion of the works related to the installed capability of the infrastructure, rather than the point at which the infrastructure achieves that capability.

Expansion projects approved and implemented prior to 2004

36. In or about March 2003, the board of BHP Billiton approved two separate, but related, expansion projects to increase BHPBIO's production from 75 mtpa. These projects involved:

(a) the development of Mining Area C (**Area C Project**); and

(b) the expansion of the port capacity at Port Hedland, known as the Products and Capacity Expansion Project (**PACE Project**).

37. It was anticipated that the combined effect of the Area C and PACE Projects would be to increase BHPBIO's total production capability from 75 mtpa in 2002 to 89 mtpa in 2004.

38. All of the tonnage references at that time were to dry tonnes. Dry tonnes is the weight of the iron ore excluding free moisture (that is, moisture not chemically bound to the iron ore). This weight is less than the weight of the shipped iron ore, as shipped iron ore still contains moisture. Subsequently, BHPBIO changed its approach and commenced using a "wet tonnes" measure of weight. Following the PACE Project, all tonnage references are to wet tonnes, which are greater than the equivalent dry tonne weight for the same tonnage of shipped iron ore products.

39. At the time of its approval by the Board in March 2003, the Area C Project involved:

(a) the development of Mining Area C to enable it to achieve production of 15 mtpa (dry) (although at that stage, production was only targeted to producing 10mtpa); and

(b) the construction of a spur line from Yandi to Mining Area C (to allow ore from Mining Area C to be transported along the Mt Newman rail line, via the Yandi spur).

40. As originally conceived, the PACE Project involved the development of rail and port facilities to enable a system production capability of 89 mtpa by 2004. The development of port and rail facilities was necessary to accommodate the additional ore from Mining Area C.

41. At the time of its approval in March 2003, the PACE Project involved:

(a) the development of the new Western Stockyard (at Finucane Island);

(b) an upgrade of dust suppression systems at Port Hedland;

(c) an upgrade of the under harbour tunnel conveyor (from Nelson Point to Finucane Island);

(d) the establishment of an additional lump re-screening facility at Finucane Island; and

(e) the construction of a new berth at Finucane Island.

42. During 2003, BHP Billiton approved a variety of minor expansion projects to enable total system production capability to achieve 100 mtpa by the middle of 2004.

43. The key elements of those projects were:

(a) the increase of the actual output from Mining Area C from 10mtpa to 15 mtpa in the middle of 2004;

(b) further investment in infrastructure resulting in increasing the Mt Newman rail line capability to 100 mtpa.

44. In addition, the capacity of the Yandi mining area was raised by 3 mtpa (to 42 mtpa) through the installation of an overland conveyor and additional ore crushing and handling facilities.

45. These accelerated expansion projects resulted in BHPBIO increasing its total system production capability to approximately 100 mtpa.

Long Term Expansion (Ongoing Works)

46. At or around the time that the board of BHP Billiton approved the Area C and PACE Projects in 2002, BHPBIO also commenced a strategy review of its Western Australian iron ore operations, focussing on BHPBIO's economic potential. This review resulted in the development of a number of long term scenarios for review.

47. At the conceptual level, a number of projects were examined, with the conceptual stage of each of these projects being completed in May 2003. Following the completion of the conceptual study, 3 cases were developed for progress to Pre-feasibility assessment.

48. A Pre-feasibility Study (**PFS**) called the Long Term Expansion (**LTE**) was commenced in June 2003, with the objective of selecting a single preferred alternative for expanding BHPBIO's operations from the three possible cases that progressed from the conceptual stage. In or about October 2003, and during the PFS stage, the LTE project was renamed Ongoing Works (**OGW**).

49. The PFS resulted in a recommended project to proceed to the Feasibility Study (**FS**) stage. This project was called Project Spectrum. The project is summarised in paragraph 11 of my confidential affidavit sworn 5 July 2005. The project involved a redesign of BHPBIO's operating philosophy. Operations would be redesigned to enable product to be "pulled" from the mine to the port (ie. having a large inventory of product stockpiled at mine that can be "pulled" from the mine to the port to meet demand as required, with only small "surge" stockpiles at port), rather than "pushed" by the mine to the port (ie. "pushing" ore from the mine to the port so as to have a large inventory of product stockpiled at port to meet spikes in demand), as is currently the case. The target production capability of the project was to achieve production of 145 mtpa. The recommendation of the PFS was endorsed in February 2004, and FS Study was commenced for the OGW project (called Spectrum).

50. As stated in my confidential affidavit sworn 5 July 2005 and described below, in June 2005 a decision was taken not to approve the OGW project in the form considered in the FS.

Rapid Growth Project 1

51. During the LTE PFS, it was decided to separate a component of the LTE project and progress that separately, so as to enable its implementation (and therefore some increase in total production) in the quickest time possible. This proposal was approved and the resultant project became known as Rapid Growth Project 1 (**RGP1**). This was designed to expand production capability from around 100mtpa to 110mtpa, through:

(a) increasing mining at Area C from 15 mtpa (dry) to 23 mtpa (wet);

(b) increasing production of ore from the Newman mining area through the utilisation of some then latent capacity at the mines in the Newman mining area;

(c) adding some further passing sidings on the Newman rail line;

(d) adding further rolling stock (ie ore cars and locomotives); and

(e) undertaking minor port infrastructure works to increase port capacity to 110mtpa.

Construction commenced in around October 2003 and was completed in around July 2004.

52. However, notwithstanding the new nominal production capability, BHPBIO's operations have not been able to consistently achieve the predicted production of 110 mtpa following the commissioning of the works associated with RGP1. This has been as a consequence of:

(a) the commencement of works associated with RGP2 (discussed at paragraphs 53 - 58 below) and the impact of those works on production capability; and

(b) difficulties associated with the complexity of seeking to run operations at their full capability. That is, prior to RGP1, the rail and port operations possessed a degree of latent capacity. However, since RGP1 this has not been the case, introducing a degree of complexity into rail operations that had not been predicted or previously encountered.

Rapid Growth Project 2

53. In or around May 2004, and during the OGW FS, a further component of the OGW project was separated from OGW. This project was called Rapid Growth Project 2 (**RGP2**). Again, the reason for separating this project was to seek a rapid increase in production to respond to growing market demand. RGP2 was approved by the BHP Billiton board in October 2004.

54. The target production capability of RGP2 was to achieve total system production capability of 118mtpa. The project's recommendations are in the process of being implemented, with some having been completed and the balance due to be completed by mid to late 2006. It is anticipated that the system throughput capability will be achieved by early 2007.

55. As with all significant projects examined by BHPBIO in recent times, the final system capability figure of 118mtpa was arrived at with the use of simulation modelling conducted by TSG Consulting. During the simulation process, in excess of 60 different cases were developed to test various configurations of capital and operational solutions, resulting in a final "best mix" of recommended capital and operational improvements.

56. The key elements of RGP2 are as follows:

Location	Infrastructure	Operational changes
Mine	➢ Develop Orebody 18 mine (**OB18**) (in the Newman	

	mining area) ➢ Modify the Orebody 25 mine to enable production of direct shipping ore (**DSO**)	
Rail	➢ Rail works associated with OB18 ➢ Procure additional rakes of ore cars and locomotives ➢ Modifications to Finucane Island rail yard, construction of a siding at Boodarie and rail associated with a new car dumper to be located at Finucane Island (CD4) – these additional rail works were designed to allow an increase in the tonnage railed to Finucane Island up to 40mpta (as envisioned would be required following RGP3, discussed below)	➢ Ensure that the rail scheduling system is designed to maintain the queue before CD2, so as to maximise the quantity of MNJV product produced, while at the same time, freeing up access to the other car dumpers. ➢ Retain a fixed rail schedule, but increase the schedule from 10 to 12 slots per day
Port	➢ Upgrade conveyor rates at Nelson Point ➢ Install new car dumper (CD4) at Finucane Island	➢ Increase port dumping capacity (in recognition of the fact that rail/port interface is the main system bottleneck)
System	n/a	➢ Ensure that maintenance activities across the operations are aligned to minimise total system downtime, through the use of the 6 week Production Forecast and 72 hour rail schedule.

57. Prior to the completion of the OGW FS, but following the completion of the RGP2 FS, BHPBIO changed two important assumptions in its modelling that had underpinned the RGP2 modelling. These changed assumptions were that, for expansion modelling purposes:

(a) mining in the Goldsworthy area would be suspended from August 2006 (this is discussed in further detail below); and

(b) the hot briquette iron plant called Boodarie Iron (near Finucane Island) (**HBI Plant**) was assumed not to be operating. The HBI Plant processed fines products from the Newman mining area into iron briquettes for use in steelmaking. It used approximately 5mtpa of fines. BHPBIO decided to shut down the HBI Plant during the second half of 2005. This meant that the fines that would otherwise have been used by the HBI Plant are available for sale. Although there is demand for that product, BHPBIO only has sufficient shipping capability at the port for approximately 4mtpa of this product. Accordingly, this will result in a reduction of total system throughput capability of 1mtpa.

58. As a result of the change in the above assumptions, the total forecast production following RGP2 reduced from the initially projected 118mtpa to 109mtpa. This drop reflected a reduction in 8mtpa in respect of Goldsworthy ore and 1mtpa due to the closing of the Boodarie Iron operation.

Non approval of the OGW Project

59. In June 2005, BHP Billiton decided that it would not approve the OGW project in the form considered in the FS. It was decided that the OGW project would be split into a number of separate proposals to follow after each other, each of which would have to be separately approved by the BHP Billiton board. Under this approach, production capability would be expanded in stages, rather than as one single project. While each given stage would involve differing degrees (and focuses) of capital investment across BHPBIO's mine, rail and the port operations, any investment in rail infrastructure and operations would only be incremental with throughput capability growth.

60. The approval of all as yet unapproved expansion projects depends on the BHP Billiton board's assessment of the iron ore market at the point at which each project comes before it for approval, the projected financial returns of the investment and the varying priorities of the company at such times.

Rapid Growth Project 3 (RGP3)

61. RGP3 is the first project to emerge from the OGW Project that went to the board in June 2005. It was approved by the board of BHP Billiton in October 2005, with work to commence immediately, and be completed on or about October 2007.

62. The RGP3 project is designed to increase BHPBIO's production capability by an additional 20 mtpa from 109mtpa to 129mtpa. Given the lag time from the completion of construction through to achieving the targeted production capability, it is anticipated that the BHPBIO's production will not achieve 129mtpa until the end of 2008.

63. The key elements of RGP3 are as follows:

Location	Infrastructure
Mine	➢ Substantial upgrades and modifications to processing plants, stockpiles and train loading circuits at Area C (deposit C) ➢ Develop new mine at Area C (deposit E)
Rail	➢ Construct new and extended mainline sidings ➢ Extension of loop at Area C ➢ Construct new locomotive preparation facility at Nelson Point ➢ Purchase additional locomotives, rakes and track maintenance equipment
Port	➢ Rebuild berth C at Finucane Island ➢ Join berths C and D (shiploader tie-in) at Finucane Island ➢ Construct new stockyard at Finucane Island ➢ Upgrade Car Dumper 1 and Car Dumper 3 at Nelson Point

64. The target production capability of RGP3 is to achieve an increase in the production of ore from the Area C mining area of 19 mtpa (from 23 mtpa to 42 mtpa). This will be achieved through an increase in port shipping and yard capacity, mine expansion works and incremental rail expansion works.

65. Given the nature of mine and port capital investment (eg loaders and car dumpers), such investment is necessarily "lumpy". Lumpy investment refers to investments in capital where the full capacity opportunity provided by that capital investment is not able to be fully utilised for a given period of time, for example, as a result of constraints at the mine that prevent the mines from loading a tonnage of ore onto the trains equivalent to the dumper capacity. This may be contrasted with "smooth" investment, where the full potential benefits of the investment are immediately realisable.

66. In the case of lumpy investment across sub-systems within BHPBIO's total system, it will be the case that a sub-system imbalance will exist until such time as the sub-system capabilities are smoothed out. Following the installation of the new car dumper at Finucane Island (as part of RGP2), a sub-system imbalance will arise as total mine capability will not match port dumper capability until further mine expansion projects proceed. However, given that it is not possible to purchase "half a dumper", such impacts are unavoidable in the short term.

Proposed changes to the use of the Goldsworthy rail line

67. Currently, the Goldsworthy rail line is only used for ores mined in the Goldsworthy mining area. That ore is railed to Finucane Island and is crushed, screened and blended at the Goldsworthy facilities at Finucane Island. As stated in paragraphs 21 and 65 of my affidavit sworn 7 July 2005, the West Yard at Finucane Island is used to receive a proportion of the ore from the Yandi and Area C mining areas via the under harbour tunnel conveyor belt from Nelson Point.

68. BHPBIO's current planning is to suspend Goldsworthy port operations from August 2006 for at least a year, in order to enable various port infrastructure works to be undertaken at Finucane Island as part of RGP3. Those port infrastructure works involve rebuilding berth C and creating a new eastern stock yard.

69. BHPBIO has not made any decision as to the future of its Goldsworthy mining operations beyond August 2007, and has recently appointed a project manager to examine the various options available to BHPBIO going forward.

70. As stated above and as discussed in paragraphs 159 to 163 of my affidavit sworn 7 July 2005, RGP2 involves the commissioning of a new car dumper (CD4) at Finucane Island in or around July 2006. This will, for the first time, enable ores from Yandi and Area C to be railed directly to Finucane Island. Going forward, BHPBIO proposes to rail ore from the Yandi and Area C mining areas to both Finucane Island (along the Goldsworthy rail line from the Goldsworthy junction) and Nelson Point.

71. As a result of the commissioning of CD4, ore from Yandi and Mining Area C will be directed to CD4, requiring use of the Goldsworthy rail line, from around July 2006. It is

anticipated that following the expansion of the mining operations at Mining Area C as a result of RGP3, an average of 33 mtpa of ore from Yandi and Mining Area C will be carried along the Goldsworthy rail line to Finucane Island.

72. I have read paragraph 94 of the affidavit of Robert Ridley and agree with his statements as to the increased congestion on the Goldsworthy rail line that will result from the above changes.

[CONFIDENTIAL INFORMATION REMOVED]

[END CONFIDENTIAL]

Future capability of BHPBIO's Newman and Goldsworthy lines

84. As stated earlier, I believe that BHPBIO's Newman rail line is currently being operated at its maximum capability, having regard to the various constraints imposed on it by virtue of the fact that the rail line is operated as an integrated part of BHPBIO's operations to produce iron ore. This will also remain the case for the foreseeable future.

85. BHPBIO's expansion planning is conducted to optimise the capability of its overall operations, and therefore to avoid unnecessary latent capacity in any part of the mine, rail and port operations.

86. Accordingly, with each expansion that is planned for the Newman rail line, the capability of the line will be fully utilised by BHPBIO by virtue of corresponding expansions of the mine and port operations, to increase BHPBIO's production of iron ore.

87. Because the BHPBIO rail system is currently being operated, and will in the future continue to be operated, at its maximum capability, third party access to the rail system (whether on the Newman or Goldsworthy rail systems) will have an immediate detrimental impact on BHPBIO's production capability. This is discussed in the next section.

Effects on BHPBIO from Third Party Access to the Rail Lines

Access sought by FMG

88. At paragraphs 70 and 72 of his affidavit, Mr Tapp states that FMG is seeking access to:

(a) approximately 295 kilometres of the Mt Newman rail line which runs from the point at which the proposed Mindy Mindy loading siding would intersect the Newman rail line to Nelson Point; and

(b) approximately 17 kilometres of the Goldsworthy rail line from the point where it intersects with the Newman rail line (the Goldsworthy junction) through to Finucane Island.

89. It is not clear to me whether FMG is seeking access to the Newman rail line past the Goldsworthy junction through to Nelson Point . At paragraphs 60, 61 and 96 of the Tapp Affidavit, Mr Tapp states that FMG is proposing to construct port facilities at Anderson Point, pursuant to an Infrastructure Agreement entered into with the Government of Western Australia. Anderson Point is situated at a location that cannot, without the construction of additional rail and associated infrastructure, be accessed by trains travelling along the Newman rail line.

90. At paragraphs 70 and 72 of the Tapp Affidavit, FMG states that it is seeking access to BHPBIO's Newman and Goldsworthy rail lines to transport ore from its mine at Mindy Mindy, and at paragraph 103, Mr Tapp states that FMG only requires access to BHPBIO's rail lines for a single pathway to move one rake (from Mindy Mindy) every 24 hours.

91. However, I note that at paragraph 2.8 of its recent submission to the NCC dated 5 December 2005, FMG states that declaration of the Newman rail line under Part IIIA "*would require Fortescue to seriously reconsider and deliberate as to whether the Mt Newman Facility could accommodate the product that Fortescue intends to mine in the Chichester Ranges*".

92. At paragraphs 104 – 105 of the Tapp Affidavit, Mr Tapp says that FMG expects that the conditions of access granted by BHPBIO would be the same as which BHPBIO would apply to any new operation of its own requiring access to transport iron ore. He also says that Fortescue is willing to accept flexible arrangements and times for the running of its trains on both the Mount Newman and Goldsworthy railway tracks and to work with BHPBIO to ensure that such access does not unduly interfere with or prejudice BHPBIO's existing operations.

93. I cannot understand what FMG is proposing, and believe that those statements have no practical meaning. BHPBIO uses its rail line as an integrated component of its production of iron ore. As explained in this affidavit and my earlier affidavits, BHPBIO operates its trains in a manner that enables required iron ore products to be produced at port, and varies the time and destination of trains to respond to variations in demand and supply constraints, particularly maintenance requirements and outages. The overriding objective of BHPBIO's rail operation is to co-ordinate with the mine and port operations to optimise production. This objective is wholly inapplicable to FMG or any other third party access seeker.

94. I do not believe that it is possible for FMG, or any other third party, to access BHPBIO's rail lines without causing a number of serious and adverse consequences for BHPBIO's operations, and without imposing substantial costs on BHPBIO.

Interference with current production

95. The first and most obvious impact of third party access will be to reduce BHPBIO's current production capability. In my view, this will be an immediate impact because, as explained earlier, with the Newman rail line presently being utilised at its maximum capability, any additional tonnage will impact on BHPBIO. This will occur notwithstanding any capital expansion to accommodate FMG, as the mere task of undertaking expansion works (which may take in excess of 2 years to construct and commission) interfaces with ongoing

operations and system capability. At current prices, 1 million tonnes of lost sales will result in forgone revenue of approximately A$55 million.

96. Further, for the reasons discussed above, the presence of a third party on BHPBIO's rail line will significantly impact on the degree of flexibility presently available to BHPBIO, which is a key component of BHPBIO's ability to optimise total system throughput capability.

97. I have read paragraphs 68 to 81 of the affidavit of Robert Ridley and paragraphs 60 to 84 of the affidavit of Rodney Hoare and agree with the views expressed in those paragraphs.

98. As noted above, one way to reduce the impact of third party access to the rail line may be to increase the track infrastructure; in particular to building extra sidings. The construction of additional rail sidings is expensive and has a significant lead time. It is not possible to assess the extent of additional sidings that would be required without having detailed information about the nature and extent of the access seekers proposed use of the rail line. If such information was known, to determine how much additional track infrastructure would be required to avoid BHPBIO's operations being adversely affected, I would need to obtain detailed modelling. Ordinarily I would seek such modelling from TSG (Rod Hoare).

Interference with production expansion

99. Third party access is also likely to cause interference with BHPBIO's expansion of its productive capability. This is particularly significant given the rapid growth that BHPBIO is currently seeking to achieve through its current expansion plans.

100. As described earlier, BHPBIO's expansion plans involve the co-ordination of expansion of each of its mine, rail and port operations to ensure that their capability remains balanced. For example, if BHPBIO proposes to introduce a new car dumper at the port, to extract maximum benefit from this upgrade BHPBIO would need to make modifications to other parts of its mine-rail-port system, such as modifying the rail operations to send more ore to the dumper to enure that it was fully utilised.

101. Any reduction in BHPBIO's flexibility in its operation of its rail system will adversely affect BHPBIO's ability to introduce (and extract full benefit from) expansions or innovations in the mine or port systems. In this way, BHPBIO's current rapid expansion

plans are likely to be restricted by third party access, resulting in lost production capability. The opportunity cost of such lost production capability is very difficult to estimate.

Breakdown of third party trains

102. I refer to paragraph 81 of the affidavit of Robert Ridley. In my view, breakdown of third party trains is a potential source of considerable cost to BHPBIO. On average, one BHPBIO train leaves the mine and one train leaves the port every 2 hours. BHPBIO is currently producing ore as fast as possible in an attempt to meet budgeted tonnage. Since the system is already operating at full capacity, there is very limited opportunity to "catch up" if a train is cancelled or delayed. The iron ore carried by a full train (2 rakes holding approximately 25,000 tonnes) has a current value of approximately A$1.4 million. Therefore, each hour a train is delayed costs BHPBIO, at current prices, approximately A$0.7 million in lost revenue, if the production reflected in that train load cannot be "caught up" within the relevant financial period.

103. In addition, a third party is likely to have a smaller production tonnage, justifying a smaller investment in rolling stock maintenance. Therefore, the third party is unlikely either to maintain its rolling stock to the same standard as BHPBIO or to respond as quickly to breakdowns as BHPBIO.

Increased track wear and breaks

104. BHPBIO has invested in many improvements to enhance the efficiency of its rail operations – both above and below rail. As a result of this investment, BHPBIO has achieved a significant reduction in the wear to its rail line and the number of "rail breaks", for example where tracks pull apart, resulting in derailments. This reduction in the rate of rail wear and the frequency of rail breaks has been achieved over the course of years through the use of technology (altering the method of joining sections of rail, monitoring and adjusting the wheel rail interface, monitoring and managing wheel impacts on the track etc) and other operating and maintenance practices. The reductions in the rate of rail wear and the frequency of rail breaks, and the technology and operating and management practices that have led to those reductions, are discussed at paragraph 79 of the affidavit of Robert Ridley sworn on 22 December 2005 and paragraphs 19 to 52 of the affidavit of Robert Ridley sworn on 14 July 2005. I agree with the statements in these paragraphs.

105. The operation of third party trains on BHPBIO's rail lines is likely to negatively impact on the efficiency obtained by BHPBIO from these improvements and result in the requirement for more frequent maintenance, thereby reducing the maximum throughput capability of the rail line. Increased track maintenance (either in the frequency or degree of work required) will not only result in increased maintenance costs, it will also result in the opportunity cost of lost production while the track is being repaired.

SWORN by the said deponent at Perth, in)
the State of Western Australia, this 23rd)
day of December 2005)

....

Before me:

TIMOTHY MASSEY
SOLICITOR, C/ BLAKE DAWSON WALDRON
LEVEL 32, EXCHANGE PLAZA, THE ESPLANADE
PERTH, WA.

Form 20A

(Order 14, rule 5A)

IN THE FEDERAL COURT OF AUSTRALIA	)	
VICTORIA DISTRICT REGISTRY	)	No VID 1641 of 2004
GENERAL DIVISION	)	

BHP BILLITON IRON ORE PTY LTD (ACN 008 700 981)

Applicant

and

THE NATIONAL COMPETITION COUNCIL

First Respondent

and

FORTESCUE METALS GROUP LIMITED (ABN 57 002 594 872)

Second Respondent

AFFIDAVIT – CERTIFICATE OF COMPLIANCE

I, **TIMOTHY MASSEY**, certify to the Court that the affidavit of **PHILLIP ANTHONY PRICE,** sworn on 23 December 2005 filed on behalf of the Applicant, complies with Order 14, rule 2 of the Federal Court Rules.

Date: 23 December 2005

TIMOTHY MASSEY
SOLICITOR, SUPREME COURT WA

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