



**bhpbilliton**

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2 March 2006

Mr David Crawford  
Acting President  
National Competition Council  
Level 9/128 Exhibition Street  
Melbourne VIC 3000

Dear Mr Crawford

**Re: FMG Rail Declaration Application**

I refer to the report dated 26 February 2006 prepared for the Council by G13 & Associates Pty Ltd and APR Pty Ltd in relation to the above application.

BHP Billiton Iron Ore welcomes the Council's engagement of independent expert consultants as a step in the right direction. This will help develop a proper basis for the Council's conclusions about facts which are critical to the Council's determination of whether it is satisfied that all of the criteria in section 44G of the Trade Practices Act are met in these circumstances.

However, BHPBIO is extremely concerned that the Council appears to have repeated previous serious errors with its procedure in the way it has briefed and provided information to its consultants. These errors could have been avoided if the Council had been willing to ask BHPBIO to provide relevant information to assist the consultants.

Instead, the consultants have produced a report which is, in their own words, contrary to "*normal practice*" in that it is based on data and information that "*have not been formulated or tested with the benefit of on-site observation and dialogue with railway personnel*". The report accordingly acknowledges that:

- it "*has been prepared with limited availability of contemporary data specific to BHP railway operations in the Pilbara*";
- "*the detail of both data and operational parameters are not sufficiently known to G13*"; and, most importantly;
- "*the judgements and conclusions in this report must be considered provisional*".

A further significant concern is that the consultants' report appears to have been prepared on the basis of certain assumed facts where the rationale and evidence for assuming those facts is not given or explained. Examples include:

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- The base assumptions underpinning Attachment A appearing inconsistent with the known facts. To illustrate, the base line BHPBIO annual tonnage adopted by the consultants appears to be 100 mtpa whereas BHPBIO approved – and publicly announced - an expansion project in October last year which will take the tonnage to 129 mtpa by 2009.
- The capital cost estimates have included costs of a rail connection between the Newman line and Anderson Point when there has been no previous consideration by the Council of such a connection, no explanation given for the role of this connection or evidence referenced for the feasibility of the connection. The fact that no easement for this line exists, and may well not be practically possible, has been ignored.
- The apparent assumption of a demand for use of the Newman service of 5 mtpa from "junior explorers" in the vicinity of Mindy Mindy.
- The consultants do not appear to have any factual basis for the capital cost estimates.

Presumably, the consultants have made these assumptions on the basis of instructions from the Council. If so, the documents or communications which contain these instructions have not been provided or referenced in G13's report. For example, the document numbered 9 in Attachment D to the report, which appears to be a key briefing document, has not been provided or mentioned in the body of the report.

The Council has also failed to provide the consultants with certain critical information. For example, the letter from Evans & Peck to the Council dated 6 February 2006 regarding rail capacity and the letter from TSG Consulting to BHPBIO dated 5 January 2006 regarding port and berth capacity both provide information that is essential in any analysis of capacity of the Mt Newman line and have not been provided to G13.

In light of these deficiencies, it should not be surprising to the Council that the report is fundamentally flawed. Examples of these flaws include:

- a number of incorrect and unrealistic assumptions, such as that FMG is proposing to build a separate 'port', rather than merely its own berths within the same port, which will be subject to the same shipping channel constraints;
- failure to justify the assumptions underpinning the technical analysis undertaken in Attachment A (which presumably underpins the quantitative conclusions to this report);
- establishing qualitatively the factors required to be taken into account in determining the capacity of the Mt Newman railway line and then failing to consider these factors quantitatively in the actual analysis and subsequent conclusion;
- unrealistic and inaccurate assumptions about future tonnages from different mining areas,
- use of a static modelling technique, while recognising that only dynamic modelling (as used by BHPBIO) can "simulate reality", and then not qualifying the results of the static modelling;

- inconsistent and unrealistic assumptions about utilisation of different segments of rail track; and
- an apparent assumption that BHPBIO will implement full double tracking in one step rather than progressively over time.

While BHPBIO is currently doing its best to attempt to respond substantively to the report by 10 March 2006, as required by the Council, the Council has provided extremely limited time to respond to what is a grossly inadequate and confusing report.

The report as it stands lacks any validity or utility and the Council cannot properly be satisfied of any matter based on its conclusions. Accordingly, BHPBIO strongly believes that the NCC's consultants should meet with BHPBIO's railway and integrated planning personnel as soon as possible to discuss the appropriate data and information to be used in the analysis of rail capacity and to explain and verify the conclusions reached in their report. We consider that a meeting will be the most productive approach in resolving these issues efficiently and quickly and is unlikely to delay the proposed timetable for the Council's final recommendation.

Subject to suitable confidentiality arrangements, BHPBIO is willing to "open its books" to the consultants in relation to information about current capital costs of rail infrastructure. BHPBIO has recently awarded and is currently awarding construction contracts for rail track expansion. This up-to-date-information, in a construction market in which prices are rapidly escalating, is critical if the consultants are to have any basis for rejecting BHPBIO's capital cost estimates.

Not enabling the consultants to meet with BHPBIO railway and integrated planning personnel is likely to result in delays in BHPBIO properly understanding the material and providing adequate submissions to the Council.

Yours sincerely,



**Graeme P Hunt**

President Iron Ore

cc Mr John Feil  
Executive Director  
National Competition Council