Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people

[2] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information, or who is the subject of the information

[3] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

[4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions

[5] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice

[6] 9(2)(j) - to protect the commercial position of the person who supplied the information, or who is the subject of the information; to enable the Crown to carry out commercial activities without disadvantage or prejudice; and to enable the Crown to negotiate without disadvantage or prejudice

[7] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied

[8] Information is out of scope or not relevant.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [3] appearing where information has been withheld in a release document refers to section 9(2)(f)(iv).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.
Hi Anthony

Thanks for this. We are still considering the points you made on continuous disclosure to the public, but in the meantime I wanted to give you a reply on disclosure to the shareholder.

My view is that SOEs shouldn’t see Treasury as a conduit to Ministers for “no surprises” briefings. I would expect SOEs to provide those briefings directly to the shareholders, via the staff in the Minister’s offices (e.g. Vicki Blyth’s email on Tuesday last week with Solid Energy’s public quarterly report). Treasury should be copied in for our information.

So in my view, best practice would have been for Solid Energy to provide a briefing directly to Ministers, copied to Treasury, explaining the significant changes to the financial forecasts you submitted on 9 March.

However I can understand why you didn’t do that. Our expectations on “no surprises” haven’t always been clearly explained to SOEs, and CFIS submissions are part of a routine process that normally wouldn’t require a briefing to Ministers. In this particular case it was unfortunate that as well as Solid Energy’s significant movements, a number of other SOEs also revised their forecasts downwards. The combined effect of the forecast changes for all SOEs was significantly negative, which was an unpleasant surprise.

Also, CFIS submissions are provided directly to Treasury, so it wasn’t unreasonable for you to assume we would brief Ministers (which we did). You also emailed me to advise of the significant changes to the forecasts, which was much appreciated. In fact Solid Energy was the only SOE which made the effort to do that - a fact which we pointed out to Ministers.

Juston Anderson | Senior Analyst | The Treasury
Tel: +64 4 890 7211 | juston.anderson@treasury.govt.nz

Hi Juston

A note to follow up our conversation this morning. An update or confirmation of the draft financial forecasts submitted within CFIS during March is due by COB today. I can confirm that Solid Energy will leave the forecasts unchanged at this time as shown within the table below.
The forecast for FY12 excludes any asset carrying value write downs, which at this stage we are yet to have full visibility over. However, please be advised that this represents a real risk in the current market environment. This piece of work is a critical year end stewardship issue, the results of which will be discussed with the Board when fully worked up and positions endorsed with external auditors. Likely to be presented to the Board either 4\textsuperscript{th} May and, or 13/14\textsuperscript{th} June. More details will follow within our Confidential Quarterly update next week as to the high risk areas (most of which you will be aware of based on previous correspondence).

For FY13 and beyond, Solid Energy have prepared forecasts based on a range of market pricing scenarios (Downside, Low, Mid, High). The single point forecasts above are still based on a relatively high level exercise utilising Low to Mid level pricing scenarios for future periods given the very volatile and dynamic market environment we are in.

Our detailed planning process is still underway, which sees the Board reviewing the first cut plan on 4\textsuperscript{th} May (focussing on a detailed view of FY13 particularly, with signals into the later years based on our best market intelligence). Full Board approval of this plan is slated within the agenda for their meeting on 13-14\textsuperscript{th} June. The steps that are currently underway include detailed mine planning and cost analysis. The timing of this process is aligned with the Board signing off the plans just prior to year end, utilising the best information we have available for the periods ahead. Any earlier timing of this process would put at risk the relevancy of this information.

In terms of your note below regarding continuous disclosure. Firstly with respect to continuous disclosure to the shareholder, represented by Shareholding Ministers, I had made the assumption in line with historical practice, that COMU / Treasury was the conduit between Solid Energy and SHM’s with respect to continuous disclosure. Hence all correspondence was via yourself and we have not historically engaged SHM’s directly regarding CFIS submissions, financial results or forecasts. Please advise if this assumption is incorrect.

In terms of communication to COMU, when we met on Friday 2\textsuperscript{nd} March in Wellington we discussed a range of topics including Solid’s response to the scoping study, major project updates and extended into a general business update and discussion of the difficult trading environment SE was facing in the near to medium term, as well as likely result on forward forecasts. In addition, I sent to you the attached note on 14\textsuperscript{th} March to give you a heads up of the summary results submitted within CFIS and key factors influencing these results.

With respect to continuous disclosure to the market generally, we do not believe we have any new information to disclose to the market beyond what we released and discussed with the market on the 21\textsuperscript{st} February during Solid Energy’s half yearly Profit Announcement where we disclosed that the short to medium term results would be materially different to the first half result.

Slide 3 discussion stated
- While $70.3 million profit was a good result, the volatile global economic environment has put volumes and prices under increasing pressure by the end of the half year.
- These conditions will continue in the short to medium term.
- Coupled with a high New Zealand dollar, this will significantly reduce the prices and revenue we receive in New Zealand dollars in the second half of the 2012 financial year, impacting on the full year result.
- Company paid dividend of $30 million in September 2011
• Not declared a further dividend at this time given volatility and significant softening of international coal markets.

Slide 10 discussion stated
• Expecting further weakening of international coal prices from current levels in the short term due to lower Chinese demand for coking coal for steelmaking.
• Profitability in the second half is expected to be down substantially on the first half result.
• Lower USD coal prices and a stronger New Zealand dollar is a real risk to the business
• Unlike 2008 global economic downturn when prices rebounded relatively quickly in the following year, we expect the current slowdown could be significantly prolonged impacting on the full year result and the first half of the 2013 financial year.
• Short term economic environment will continue to drive volatility in international coal markets.
• Remain confident in our long-term demand outlook which is strong and unchanged

Both yourself and [4] were invited to participate on the conference call which accompanied the results announcement but I understand that neither of you were able to dial in.

In terms of the CFIS submission, in good faith Solid Energy attempted to provide Treasury with the latest view of forecasts via this submission in advance of business plans and budgets being formulated and approved by the Board during normal business processes. Until the formal business plan process is completed and approved by the Board we would be unlikely to discuss internal monthly forecasts with the market (other than to flag significant changes in the environment – which we did as part of the half year release). I suspect the mismatch with the National budget timeline is an area which needs to be further explored.

Disclosure of Commercial Value (as I’ve discussed with [4] and John previously) is not a concept replicated within listed commercial entities. Additional caution is required as we move towards potential part privatisation. It’s the job of the market itself to assess LT value. These figures will never be discussed with the market outside of long term planning processes and Board approval of such, as is done via their annual endorsement of the SCI. This is the appropriate time for such a disclosure for however long this requirement is maintained.

Please let me know if you need any further information.

Regards, Anthony

From: Juston Anderson [mailto:Juston.Anderson@treasury.govt.nz]
Sent: Thursday, 29 March 2012 9:40 a.m.
To: Anthony Burg
Subject: RE: Solid Energy CFIS submission 9th March

Anthony

Further to John’s email below and Don’s reply, Ministers have asked us whether Solid Energy has complied with the SOE Continuous Disclosure Regime (CDR) in relation to the significant changes in its financial forecasts.

As you know the CDR requires SOEs to disclose to the public ‘material information’. The definition of material information includes information that “an SOE estimates will have a material effect on its Current Commercial Value”. Solid Energy’s forecast net surplus has decreased by between 26% and 75% across the years 2011/12 to 2015/16. While we note Don’s comments about the uncertainty surrounding the forecasts, it seems to us that these decreases are likely to have a material impact on Solid Energy’s commercial value.
There are a number of clauses in the CDR which allow SOEs to not release material information in certain circumstances, but we are not sure if any of them would apply in this case.

Therefore in our opinion there appears to be a prima facie case that Solid Energy should have made a continuous disclosure release in relation to this material.

Can you please advise Solid Energy’s views on this, so that we can respond to Ministers.

Juston Anderson | Senior Analyst | The Treasury
Tel: +64 4 890 7211 [4]  juston.anderson@treasury.govt.nz

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From: Don Elder [mailto:don.elder@solidenergy.co.nz]
Sent: Tuesday, March 20, 2012 10:32 PM
To: John Crawford
<Anthony.Burg@solidenergy.co.nz>; SOLID: John PALMER
Subject: Solid Energy CFIS submission 9th March

Hi John
I only learned late today that you had emailed me last night. For some reason I didn’t receive it – can you please check my email address? I have received it from Bill Luff, who received it from Anthony, who is out of the office. I had hoped to talk with John Palmer after his meeting today with you, before sending this, but I have been tied up in meetings until just now and so have not been able to yet.

Here is the background to our 5 year CFIS submission on 9 March, as requested in your email (I understand Anthony and Tom have already provided similar information to Juston):

- The current international economic slowdown has caused international steel demand to fall well below normal levels, which in turn has driven demand for hard coking coal downwards and caused prices to plummet about 30% in 6 months
- The AUD and NZD remain high, even though each time in the past several decades that commodity prices have dropped this far and fast the NZD and AUD have moved down similar amounts
- In NZD terms the quarterly HCC benchmark price has fallen 35% in 6 months to a 36 month low
- Some customers, particularly in China, are currently only taking HCC shipments at prices 10% below the benchmark price
- We do not currently believe this is a structural change in the long-term price, but more likely it is a short-term but severe outlier as steel mills destock in Asia
- Our FY12 H2 result will therefore be well down on H1 and we currently forecast our FY12 full year NPAT in the range $90 - $98 million (before adjustments), down from $134M budget
- Markets remain extremely uncertain and it is difficult to tell whether they are bottoming out or have further yet to fall
- We are therefore currently taking an appropriately conservative view in our financial forecasting, and assuming prices remain low through most of FY13 then rise slowly back to the long-term trend price path through FY14 and FY15
- Faced with this uncertain outlook we are managing the business accordingly at present, implementing significant cost savings measures and constraining capital spend tightly
- We expect we may have a significantly clearer view of forward markets in the next month, and at the same time we will complete the next stage of our internal production planning for FY13 in response to current market scenarios
- We therefore expect to have significantly clearer financial forecasts by mid-April, in time for the 20 April CFIS update

Regards
Don
Dr Don Elder, CEO, Solid Energy NZ Ltd
PO Box 1303, Christchurch, New Zealand

[1]

[4]
From: John Crawford [mailto:John.Crawford@treasury.govt.nz]
Sent: Monday, 19 March 2012 5:34 p.m.
To: Don Elder; Anthony Burg
Subject: Financial forecasts

Dear Don

Solid Energy recently supplied Treasury with updated 5-year financial forecasts. These forecasts are one input into Treasury’s preliminary Budget forecasts of the Crown’s financial position. Solid Energy’s updated forecasts showed significant changes in forecast profits and dividends compared to previous forecasts supplied in Jan 2012 as shown below:

<table>
<thead>
<tr>
<th></th>
<th>NPAT</th>
<th>Dividends</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011/12</td>
<td>-41.9</td>
<td>-20</td>
</tr>
<tr>
<td>2012/13</td>
<td>[2],[5]</td>
<td></td>
</tr>
<tr>
<td>2013/14</td>
<td></td>
<td></td>
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<tr>
<td>2014/15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2015/16</td>
<td></td>
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</tr>
</tbody>
</table>

Ministers were briefed on Treasury’s preliminary Budget forecasts today and expressed concern at the significant changes in Solid Energy’s forecasts. Anthony Burg emailed Treasury on Wednesday last week to provide an explanation and some context for the change in the forecasts, but to our knowledge, Solid Energy had not directly briefed shareholding Ministers as they expected under a “no surprises” policy. Ministers were in particular surprised by how much the forecasts had changed over a 2 month period.

Ministers have requested that we provide them with information as soon as possible explaining :-

a. What is the driver and reasons for the change in forecasts – this has been provided by Anthony in his email of last Wednesday?
b. Why Ministers and/or Treasury were not informed prior to the latest forecasts of the significant changes, given we are operating a disclosure regime where significant changes need to be communicated to shareholders and Treasury?

Can you please provide us urgently with the information that we will need for the above. I am available to discuss this should you need to do so.

John Crawford | Deputy Secretary, Commercial Transactions | The Treasury

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Thankyou.

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