

MINISTER FOR MINING

15th February 2007

The Leaders
CMCA Core Group
C/- Ok Tedi Mining Limited
P. O. Box 1
TABUBIL
Western Province

My dear Leaders,

COUNTERPROPOSALS OF THE CORE GROUP TO THE SHAREHOLDER'S ADDITIONAL OFFER TO THE CMCA PACKAGE

Firstly I wish to thank the Leaders of the Core Group for the time and effort spent on analysing and preparing the counter response to the shareholder's offer. It is important that we all continue to communicate and contribute constructively towards reaching a consensus outcome that reflects a balance between benefits to the CMCA villages and the environmental impacts in the region.

Once again I wish to remind all the leaders that the National Government and the Ministry of Mining is committed to assisting all the parties to find appropriate solutions to the challenging issues that we now face in the CMCA Region. It is a fact that no one solution will completely solved all our problems in the affected region. Another hard fact is that we have to live within our means if we have to sustain future benefits streams in the region for the full extent of the mine life.

Whilst appreciating the facts and the sentiments that were well expressed by the Core Group, the State and the relevant shareholders are also striving to find a balance between the environmental impacts, benefits to the communities and the economic viability of the project. It has been a daunting task for the shareholders, however we are all determined to amicably progress forward with these challenges.

In light of the above remarks, the State and the relevant shareholders have considered the counterproposals made by the Core Group and would like to respond accordingly.

1. **The Government offer relating to the 5% of the Western Province People Fund.**
 - a) **We understand that without a resolution to the pyrite extraction problem, ARD levels will become unacceptable and the mine will be**

forced to close. However, we request that conditions associated with Bige pipeline be removed and that the 5% share of the Western Province's Fund be paid regardless from the 2006 until mine closure whenever that may be.

The condition attached to the NEC Decision to allocate half of the 10% Dividend Trust Fund to the new CMCA entity is in fact a condition by nature. Whether the State imposes this condition or not, the dilemma is that, the income to this Trust Fund comes from dividend that is paid out to the shareholders when the operation becomes profitable. The fact is that, if the mine's Mine Waste Project and the storage of pyrite at Bige is not constructed the mine will close and there will be no more mining operation. Hence, no profits and no dividends will be paid out to shareholders including the 10% Dividend Trust Fund for Western Province. Therefore, the new CMCA entity would get no dividend payments in 2007 and thereafter, except for half of the 2006 dividends which has already been committed by the NEC Decision. To be clear, that amount is not conditional on the Mine Waste Project.

- b) We also request that the 5% be paid directly to the new entity.

As per the NEC Decision, half of the 10% Dividend fund including half of the 2006 dividends will be allocated to the new CMCA entity for development projects directly. The allocation of funds to the new CMCA entity for projects in the CMCA region will be done in accordance with the 10% Dividend Trust Account Deed of Trust.

2. The Shareholding – 50% increase in CMCA offer

- a) OTML's contribution to a resolution is insufficient and should be doubled from the current 2.5% equity offer to 5%.

The call to increase the 2.5% equity of the new CMCA entity to 5% is not possible. This would dilute the shareholding of the other shareholders further including the National Government and is not acceptable. There are some other complexities surrounding the issue of share and I understand the Managing Director of OTML will be presenting you with an alternative improvement to the CMCA payments in response to your request.

3. The PNGSDP Offer

- a) We seek a guarantee from PNGSDP that the new CMCA entity will have the leading role in the decision making for the funds committed to the new entity and, if possible, those fund should be paid directly into the proposed entity.

As a matter of policy PNGSDP encourages communities to take the lead in developing and taking ownership of programs and projects which directly

affect them and their communities. This "leading" role takes several forms including providing funding for projects, managing and providing community participation, and generally in ensuring successful implementation of projects and in the sustaining these projects.

PNGSDP wishes to establish and work in partnership with the proposed new CMCA entity, the current CMCA Trusts, the Local Level Governments and District Administrations, the Fly River Provincial Government and the National Government. It is a requirement of PNGSDP's Program Rules that communities and community organisations such as the proposed new CMCA entity consent to any development program or project before implementation can proceed. This consent will be required in the form of a Project Funding Agreement.

PNGSDP also proposes to engage in a dialogue with the proposed new CMCA entity to identify objectives and priorities, agree to specific programs and projects within these priorities, identify the best strategy and method for implementing the programs and projects, and how such programs and projects should be funded.

In considering this matter, we should also recognise the role of the National Government and the Fly River Provincial Government as their consent and participation will mean that additional funding resources including from aid agencies, will be available to meet development costs as well as maintenance and recurrent costs for these programs and projects.

PNGSDP's commitment which was conveyed to the CMCAs by the Minister for Mining and which was endorsed by the National Executive Council is for a commitment of K 18 million per year or 2.5 % of the net Dividend received by PNGSDP from OTML (not gross dividend) from 2007 to 2013 and that is a commitment of project funding. This K 18 million per year will therefore also include all projects including those to be implemented by PNGSDP's subsidiary companies like PNGMFL, PNGSEL and PNGSIL as well as maintenance of the Tabubil-Kiuga Highway if this is agreed to by all parties including the Fly River Provincial Government and the National Government. There will be no cash payments directly to the CMCA entity. Payments will be made directly to project partners who implement the project.

- b) **As a successor entity for the social and economic sustainable development benefits of the Ok Tedi Mine, we request that PNGSDP guarantee the K 18 million per annum [and or more] for the planned 40 years lifespan of the PNGSDPL.**

The Program Rules of the Company clearly state that the Board of PNGSDP is authorised to decide on the allocation of funding from the Long Term Fund for sustainable development purposes at the time of Mine Closure. This means that the Company cannot at this time agree to allocate, commit

or guarantee funding for the proposed new CMCA entity for the period after 2013 (the current planned date for the Mine Closure).

Having said this, PNGSDP remains committed to continue discussions with CMCA Communities, OTML, the Fly River Provincial Government, and the National Government about ways in which critical infrastructure and services in the CMCA corridor area can be maintained.

- c) **Financing for projects already planned, should not come from the 18 million per annum committed by PNGSDP. For example, the PNGSDP's Board chair has already committed to maintain and improve the highway and we would anticipate this funding to come from PNGSDP's other source of funds.**

As we have outlined above, the K 18 million commitments per year will only include the contribution made by PNGSDP for projects being implemented within the river corridor areas including those under implementation by PNGSDP subsidiaries and other entities. If a PNGSDP subsidiary like PNGSEL is able to develop rural electrification projects using funds from other sources, then this would be additional to PNGSDP's K18 million commitment.

Regarding the Tabubil—Kiunga Highway, currently this is the responsibility of OTML. The future maintenance of this Highway after Mine closure and its funding will need to be discussed with the Fly River Provincial Government and the National Government.

Furthermore, with the support that its subsidiary companies are able to provide, especially PNGSEL and PNGSIL, PNGSDP aims to secure the commitment of additional funding commitments for critical infrastructure services from the Fly River Provincial Government, the National Government, aid donors such as the World Bank, and private investors (which also need such infrastructure).

- d) **Unused funding should accumulate and be set aside for the new entity when it is ready.**

All funding committed to the CMCA Communities for projects remain available and accumulate from year to year. This includes funding which has not been committed or spent on projects during the period 2007 to 2013 which would be available for projects benefiting CMCA Communities.

- e) **We ask that PNGSDP provide additional annual funds for the operating expenses of the new entity beyond mine closure.**

PNGSDP has at the request of the Government agreed to fund the consultancy for establishing the proposed new CMCA entity. The question of funding of the proposed new entity should be considered under the consultancy. Until then, PNGSDP is unable to agree to this proposal.

4. Other

- a) **We ask that Government establish a realistic contingency fund or insurance fund for major environmental or health disasters.**

The National Government has approved under the Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001, more specifically under the Ok Tedi Mine Closure and Decommissioning Code 2001, a specific Financial Assurance Fund estimated at US\$100 million. OTML is obligated to review this amount to reflect how much it will cost to perform the Mine Closure Plan and this amount must be acceptable to the State. Future Mine Area Rehabilitation and appropriate environment compliance monitoring and mitigation strategies to prevent possible environment disasters are related cost components of the Financial Assurance Fund.

- b) **We understand an additional 1.25% may be available from the Tax Credit Scheme and request that those monies be committed to the affected corridor.**

The Tax Credit Scheme (TCS) is a National Government Scheme designed for the mining companies to assist the host Provincial Governments of mining development projects to undertake community impact projects throughout the Province including the mine impacted areas. Projects submitted for funding under TCS are considered on a case by case and no special allocation of TCS funding will be made to one particular location. The new CMCA entity may also submit some of its specific projects for funding under TCS in the future. Currently, the rate is set at 0.75%, except for special projects such as the Highlands Highway which is set at 1.25% as the highway serves several Provinces.

- c) **We request that Government and OTML identify increased contract opportunities for Landowner companies.**

This is an issue for OTML and the company is already addressing it through its business development programs, targeting CMCA landowner companies.

In response to the Lower Ok Tedi's separate letter my response is as follows:

The compensation regime in the Lower Ok Tedi is now governed by three documents:

- The Mining (Ok Tedi Restated Eighth Supplement Agreement) Act 1995, which creates the system of general compensation administered by Heduru Limited and bars further litigation over environmental claims;
- Lower Ok Tedi Agreement, which provides for additional compensation in the Lower Ok Tedi;

- Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001, which gives the force of law to the CMCA's, including the Lower Ok Tedi CMCA.

The effect is that the Lower Ok Tedi villages receive:


- General Compensation
- Lower Ok Tedi Agreement compensation
- CMCA Compensation.

The CMCA Compensation is based on environmental predictions. Where they are exceeded the CMCA's provide that the parties will negotiate a corresponding increase in the compensation to be paid.

The CMCA's provide that this is the sole avenue to address changes in compensation payments.

Finally I reiterate that the specific responses above have been tailored considering the difficulties in reaching a balance between benefits to the communities, environmental impacts and the economic viability of the Ok Tedi project. It is a major concern for the National Government and the respective shareholders that a delay in reaching a satisfactory conclusion on the additional offer made by the shareholders will deny the CMCA communities from realising the increased benefits already anticipated in the review process.

Yours sincerely,



HON. SAM AKOITAI, MP
Minister for Mining

cc: Robert Igara, CEO, PNGSDPL
Keith Faulkner, MD, OTML
Sir Arnold Arnet, Legal Advisor to the CMCA Delegates
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