

**Bremners****Solicitors**

Our Ref: JPW/JC/B1084-005  
 Your Ref: BP/M2382  
 Date: 12 September 2008

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PEAK DISTRICT NATIONAL PARK AUTHORITY	
ALLOCATED GROUP OFFICER	BHP/legal
DATE REC'D	15 SEP 2008
ACKNOWLEDGEMENT:	
REPLY:	
FILE ALLOCATION:	
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Dear Sirs

**Bleaklow Industries Ltd - ROMP Application and EIA matters**

We refer to our letter of 20 August 2008 and your response of 22 August 2008. We have also had an opportunity to consider some of the wider implications of your notice dated 12 August 2008 and these we set out below, in no particular order of importance, for your consideration:-

1. The concerns set out in our letter of 20 August have not been met, despite the grant of a short extension of time to 30 September 2008.
2. Notwithstanding PDNPA's equivocation hitherto as to the application of the 1999/2000 Regulations to this ROMP Application, we are taking it that it is now PDNPA's position that those regulations are (now at least) applicable, but please confirm.
3. As noted in our earlier letter, whilst it will theoretically be possible to address the screening requirements of the 12 August notice, it will only be possible to do so upon the basis of the Sullivan judgment, as it alone represents the law until such time as the Court of Appeal determines otherwise.
4. The Court of Appeal's determination may well not be the end of the matter, so far as screening is concerned, because it is quite possible that the interpretation of the 1952 Permission will have to be considered by another Inspector in the light of the Sullivan judgment and the opinion of the Court of Appeal.
5. The Regulation 5(3) Notice seeks and requires information to be provided which covers (a) the whole of the 1952 Permission site, and (b) the whole of the period unexpired of that Permission namely between now and February 2042.
6. The 1997 ROMP Application (under Schedule 13, paragraph 9) describes the development proposed as being for the 15 years beyond 1997 (paragraph 3.11) of which the first 11 years have been taken up in the conduct of the litigation arising from PDNPA's attempts to sterilize the 1952 Permission. Four immediate consequences arise:-

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- (1) The ROMP Application may well require substantial amendment to reflect the impact of that period as well as revised arrangements for the future in the light of legislative changes;
- (2) The guidance notes to the 2008 Regulations suggest that any Environmental Statement will now have to cover not only the original period for which the ROMP Application was made, but to cover the subsequent review periods and any applications to be made under Schedule 14.
- (3) Operational plans and proposed conditions can only be put forward sensibly and reasonably if they can be reasonably assured of being compliant with the law. Information requested pursuant to Schedule 13 paragraph 11 and the 2008 Regulations can only be reasonably provided if it can be framed, having regard to at least a degree of confidence (if not absolute certainty) of the parameters which will govern the proposals.
- (4) It follows from these matters that PDNPA will be in corresponding difficulty in framing any screening or scoping opinions, and that it will in practice be impossible to produce any meaningful ES because of the uncertainties.

If PDNPA disagree with this analysis, could you please explain how PDNPA expects a scheme to be designed, when the scope of the relevant planning permission governing it remains in issue, in this case to a very material extent.

7. The pending appeal to the Court of Appeal, and its outcome must have a bearing on all the consequences noted above (as well, probably, upon others which we cannot currently articulate). It cannot reasonably be contended that the provision now of the relevant screening/scoping information should be based on the Sullivan interpretation (as representing the only current legal basis for the proposals) when it is PDNPA itself which is appealing that interpretation.
8. The immediate legal consequence of all this is that it is irrational (in the Wednesbury sense) to require proposals to be put forward now, when the only basis upon which they can be framed is itself in question. To then seek to penalise a party for failing to comply with such a requirement seems to us to be oppressive and draconian.

Accordingly, we seek on behalf of BIL a formal extension of time for the provision of the information required by the Notice of 12 August 2008 until the interpretation of the 1952 Permission has been settled, and a reasonable period thereafter to enable the comprehensive proposals now required to be provided to be formulated in the light of the then-applicable law. The precise duration of the extension sought clearly cannot be predicted now, and will only be capable of reasonable assessment once the interpretation issue has been settled. It has to be recognised, we would suggest, that the timetable which might reasonably be established for the provision of the relevant screening/scoping information will inevitably be dependent on the extent of any variation from the Sullivan opinion which emerges from the pending appeal.

Consequently we seek confirmation that the period for compliance with the notice of 12 August 2008 be extended initially until say 3 months have expired from the final determination of the interpretation of the

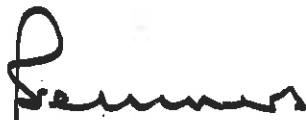
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1952 Permission, upon the express understanding that, if, in the light of the pronouncement of the Court of Appeal, a greater period of time will reasonably be required to enable BIL to comply with the notice, PDNPA will grant such additional period, as is, in all the circumstances then subsisting, reasonable.

BIL has neither interest in, nor wish to make any further challenge to these Regulations or their impact, if that can fairly be avoided. For the reasons set out at length above, the solution we propose is both reasonable and fair to the Company, whilst enabling PDNPA to discharge its functions properly and reasonably, with the combined view of securing the objectives of the 1995 Act, given PDNPA's presumed unwillingness to exercise its existing powers of revocation.

We should appreciate confirmation of the extension sought by close of business on Friday 19 September, to avoid further costs in meeting the current deadline of 30 September, which, for the reasons given may be either premature or unjustified.

Yours faithfully



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