

**Mining Certification Evaluation Project (MCEP)**  
**Working Group Meeting 7**

**Thursday 26 February 2004: 10am-4pm**  
**BHP-Billiton**

**Participants:**

Andrew Minns, Newmont  
Andrew Rouse, WWF  
Francis Grey, Sustainable Asset Management  
Ian Wood, BHP-Billiton  
Kristina Ringwood, Rio Tinto  
Margaret Donaldson, on behalf of Aboriginal and Torres Strait Islander Social Justice Commissioner  
Martha Macintyre, University of Melbourne  
Michael Rae, WWF  
Peter Colley, Construction Forestry Mining and Energy Union  
Tim Offor, Offor Sharp and Associates (facilitator)

**Guests:**

Sam Brumale, Brumale Consulting Pty Ltd

**Apologies:**

Dave Baker, Newmont  
Melanie Stutsel, Minerals Council of Australia  
Nick Currey, Placer Dome  
Nick Chipman, PwC  
James Ensor, Oxfam Community Aid Abroad  
Martin Webb, WMC Resources  
Malcolm Forbes, Department of Environment and Heritage

**Summary of main points of discussion**

**1. Welcome and Aims of Meeting**

- (a) Aim of meeting to discuss the feedback received on the Working Paper 1, the development of the Audit Protocol and agree on next steps, selection of lead auditor and next steps, and scheduling of field trials.

**2. Feedback on Working Paper 1**

Submissions on the Working Paper 1 received from ICMM, South African Chamber of Mines, Centre for Social Responsibility in Mining, Sustainable Asset Management Group, World Resources Institute, BHP-Billiton, Placer Dome and Rio Tinto.

Comments made in the suggestions covered high level issues as well as specific recommendations for amending the wording of the Working Paper. Some of the comments received relate more to governance arrangements for a certification scheme and as such are beyond the current scope of the MCEP. It was, however, recognised that resolution of these issues would be fundamental to the ultimate success of the initiative.

No submissions received from environmental organisations, however the project team know that there is close interest in the project and that they are taking a wait and see approach.

Discussion ensued as to the substantive high level issues raised in the submissions. Issues identified as riverine tailings disposal, the role of government, free, prior & informed consent, collective bargaining. Group decision to review each in turn.

### ***Riverine Tailings disposal***

Discussion Points:

- Key issue from a mining industry perspective is how the project addresses riverine tailings disposal. It will be difficult for the project to make a value proposition to the industry more broadly with the criteria specifically prohibiting practices
- Criteria 6 d) iv) ‘The MSO does not use riverine tailings disposal’ is inconsistent with the approach taken in the P&C and weakens the methodology
- Important issue for the credibility of a certification scheme, particularly where it is seeking to certify ‘well managed mines’. Governance arrangements in the scheme are all important as to how it would address practices such as riverine tailings disposal
- Concern raised as to how the non-mining audience would respond to P&C that do not adequately address riverine tailings disposal. This is a major threshold issue for some stakeholders for whom any notion that that mines employing this practice would be certified would greatly devalue the process
- Discussion about taking a risk-based approach, consistent with many of the other criteria

#### **Actions**

1. Add dot point to Box 8.1 about taking a ‘risk-based approach’
2. Add section to the preamble (section 8) about a risk-based approach, to provide the narrative of what this approach means.
3. Delete criteria 6 b) iv) and incorporate riverine tailings disposal into the existing criteria 6 b) v)

### ***Role of Government, and Free, Prior & Informed Consent (FPIC)***

Discussion Points:

- Currently the Working Paper 1 is ‘silent’ on the role of government in mining. By not recognising the role of government, the project could be seen by some as

avoiding a very practical issue for all mining companies and could be construed as undermining the role that government has in many countries regarding mineral resource allocation and extraction. From a mining company perspective, role of government is important in all cases

- FPIC is intricately linked to the role of government with mining. Complex issue as to determining how the principles of FPIC work in practice. Can a single family hold up a mineral development?
- Some of the submissions have interpreted FPIC in the Working Paper as granting FPIC to communities where under some circumstances this conflicts with the role of government to determine resource allocation on behalf of all citizens
- Discussion as to whether we are taking a rights-based approach or a legal approach. Comment that taking a rights-based approach can challenge the recognised role of government in determining mineral resource allocation and extraction. In the absence or inadequacy of government processes, companies bring their own ethical/moral standards to bear
- Discussion that FPIC is language that is widely used in relation to a rights based approach and that the MCEP should seek to continue to refer to it as such
- Discussion that it is important for the document to refer to the role of government
- Discussion that indigenous rights of self-determination also fall under the ‘role of government’. Company experience is that not all Governments recognise this “right” and companies seeking to unilaterally grant the right of self determination to indigenous communities may create serious conflict with their host governments

### **Actions**

4. Add ‘Role of Government’ section to Section 8 (preamble). This could set the context to subsequent commentary about inter-related issues already included such as ‘indigenous people’, ‘self-determination’ and ‘FPIC’. Role of Government section should include discussion about the role of government in resource allocation and that the mining industry respects the role of government in this regard, discussion that a mine-site’s standards may exceed the requirements of government to deliver better outcomes, however this may cause tension between mining companies and governments. It should also set out the role of government in meetings its international law obligations under human rights treaties including obligations to Indigenous people.
5. Amend Section 8.4 (FPIC) so as to provide more detailed explanation of what FPIC means for Mine Site certification. The text to describe a ‘reasonableness’ test in applying FPIC, such that due process has been followed that has led to a fair and reasonable outcome. As discussed in previous WG meetings, a distinction should be made between securing FPIC of communities, and a requirement to obtain FPIC of each and every individual. The intent of the criteria is to ensure the former has been achieved not the latter. The WG recognised that consent may not be achieved in the eyes of all stakeholders. The challenge for the auditor will be to determine the success of the MSO’s efforts to achieve FPIC and that the ultimate outcome was viewed as fair and reasonable in a sustainable development context.

6. Criteria 3 e) i). Amend criteria with new wording to reflect the WG discussions.

### ***Collective Bargaining***

Discussion points:

- Comment made in one of the submissions was that the P&C relating to collective bargaining has an implied assertion that ‘offering collective arrangements is always necessary to ensure fair outcomes for workers’
- Comment that core issue is that bargaining needs to be undertaken in good faith
- Discussion that the International Finance Corporation is proposing to incorporate core labour standards into their ‘Safeguard Policies’

#### **Actions**

7. Proposed amendments to criteria 3 b) i) suggested. ‘The MSO proactively engages with employees to determine mutually acceptable employment arrangements.’
8. Should the above amendment be made, then it may make the 2<sup>nd</sup> sentence of the criteria redundant ‘The MSO may offer other employment arrangements, consistent with its employees’ rights.’

#### **Actions for finalising Working Paper (in addition to actions 1-8):**

9. Criteria 10 a) i). Amend criteria so as to remove reference to reporting against MCEP principles
10. Circulate the Working Group document with track changes, combining the actions arising from this WG meeting and the proposed amendments from the submissions received
11. WG to agree to final wording
12. Circulate final Working Group document to contact list, with covering letter outlining how substantive issues raised in submissions have been addressed

### **3. Project Officer**

Discussion Points:

- WG informed that the replacement for Fiona Solomon has accepted an position with a mining company
- Discussion about the suitability of two candidates who have expressed a strong interest in the project officer position

### **4. Audit Protocol**

A number of WG members have commented on the draft audit protocol

Six Performance levels are proposed against which each criterion would be assessed.

The audit protocol does not provide a weighting for criteria or a protocol to determine a mine-sites overall performance level ie requirements to determine a ‘pass’ or ‘fail’.

**Discussion Points:**

- Discussion around the number of performance levels. Six may be too many. Suggestion that this be reduced
- Clarification sought on composition of audit team. Agreed that audit team is comprised of lead auditor who is the lead for each and every site trial. The composition of the rest of the audit team will be individuals put forward by the respective company participants such that company staff and/or representatives will be part of the audit team for that company’s mine site
- Discussion around the capacity of the audit team completing an audit in five days. Agreement that the audit should not go beyond five days
- Proposal made that to assist with the collection of data and the preparation of an audit report, that a Template Audit document be developed. WG shown the BHP-B audit template used for their site audits

**Actions:**

13. WG to provide their feedback on the Audit Protocol introduction (Section 1 & 2)
14. WG to provide their feedback on the Audit Protocol descriptors (Section 3), in particular, feedback on providing more specific guidance to the auditor as to the on-site verification sought against the criteria ie ‘un-packing’ the audit requirements for FPIC criteria
15. Reduce number of Performance Levels to five, through combining ‘Sub-Standard’ and ‘Needs Improvement’
16. Amend description of audit composition (box in section 2.3.2) such that
  - Lead auditor the same for all field trials
  - Each mining company puts forward names for the rest of the audit team that will audit their mine site
17. Proceed with the development of an Audit Report template, building on the Audit Protocol by providing a document that the auditors can enter their findings into directly during the audit. The Audit Report template to allow the auditors to
  - Provide their assessment of the MSO’s performance against each of the criteria
  - qualitative commentary of the ‘auditability’ of the P&C, the effectiveness of the audit protocol, capacity of audit to assess in time available etc
18. IW to ascertain whether BHP-B’s Audit template can be made available to the project

**5. Field Trials**

**Discussion Points:**

Following mine sites are proposed with :

BHP-B	Cannington	1 <sup>st</sup> group of trials
MPI	Stawell mine	1 <sup>st</sup> group of trials (tbc)
Newmont	Tanami	2 <sup>nd</sup> group of trials
Placer Dome	Granny Smith	2 <sup>nd</sup> group of trials

- Project team has written to MPI seeking their participation in the project by putting forward their Stawell Mine as a trial site
- Assuming Stawell mine is involved, who comprises the audit team?

**Actions**

19. Project team to follow-up to MPI to ascertain their involvement.
20. Companies to provide feedback to project team that they are OK with the proposed groupings for the field trials
21. Companies to identify company participants on the audit team
22. Finalise timing of field trials

**6. Lead Auditor**

Position Description of Lead Auditor has been circulated to WG for comment. Project team has received an expression of interest from DNV.

**Discussion Points**

- Suitable lead auditors are likely to be known to the mining companies. These could be either large audit firms, or sole operators. Suitable candidates could come from either group
- Discussion as to whether the lead auditor position should be advertised or put out to limited tender

**Actions:**

23. In terms of selecting the lead auditor, three steps agreed:
  - approach PwC to ascertain whether they may be interested in the lead auditor role
  - project team to write to major audit firms, to ascertain their interest in the lead audit position ie URS, ERM, DNV, others? WG to provide list of firms/individuals to be approached, by 5 March 2004
  - Advertise in Tender section of The Australian
24. Amend point 4 of position description such that it is clear the lead auditor is not selecting the other members of the audit team.

**7. WG Members on field trials****Discussion points:**

- Agreement that WG members can participate in the field trials and that this should be as participants of the audit team rather than observers

## **8. External Communications**

### **Discussion Points:**

- Next issue of The Canary to be released once Working Paper revisions are finalised and timetable of field trials can be announced
- Article written by Leon Gettler, published in The Age.
- MR planning to go to South Africa to discuss MCEP with Anglo American
- ICMM executive WG meeting planned for June/July in Melbourne. This could be a good opportunity for WG members to participate with ICMM discussions
- MCA's next conference, October 2004, is an international conference, so could be good opportunity to provide an update on the MCEP

### **Action:**

25. Seek permission from The Age to have Leon Gettler article reproduced on the project website

### **Next Meeting**

Next meeting proposed for either 19 or 21 May 2004, @ Rio Tinto

### **Action:**

- WG to provide project team with preferred date for next meeting