IN THE WARDEN'S COURT, PERTH
BEFORE : R.F. RASMUSSEN ESQ., WARDEN
APPLICATION FOR EXPLORATION LICENCE 70/185
BY TOLECO INTERNATIONAL OILS PTY LTD
OBJECTION 181/84 BY THE WORSLEY JOINT VENTURERS
(REYNOLDS, SHELL, B.H.P., KOBE INTERESTS)

Mr Bourke for applicants.
Mr Stevenson for objectors.

The hearing was confined to the above objections, objections by various private land owners have not yet been heard or conceded. I therefore make my report on the application to the Minister in this context, to enable the applicant and the objector to obtain access to the Hon. Minister and for him to clarify his intentions in conjunction with the other matters of State which are affected.

The application is the second recent application to be considered, for exploration rights within Mining Lease 258 SA, under clause 18 of the Alumina Refinery (Worsley) Agreement Act, 1973 (as amended).

The target mineral in the Exploration Licence application is gold, and the exploration would be carried out on lateritic material which is regarded as bauxitic as well as potentially gold bearing.

Upon my finding that clause 18 of the Agreement Act has in contemplation applications such as this; and the application is available to be considered for approval under the exception contained, then I believe the objection is determined as follows:

GROUND 1	- upheld. The application is within Mining Lease 2585A.
GROUND 2	- dismissed. I am bound to report on the application for Exploration Licence 70/185.
GROUND 2.1	- dismissed. For the purpose of the application, the land is Crown land.

GROUND 2.2	- dismissed. The application is one contemplated by clause 18.
GROUND 2.3	- not relevant. No grant is sought from the Warden.
GROUND 2.4	- dismissed, clause 18 provides for such applications.
GROUND 2.5	- accepted. The grant of any rights under the Exploration Licence must take the Agreement Act into consideration.
GROUND 3	- accepted, as for ground 2.5.
GROUND 4.1	- accepted. The application is subject to the Agreement Act.
GROUNDS 5.1 AND 5.2	- discontinued.
GROUND 5.3	- accepted. My report cannont contain an unequivocal recommendation.
GROUND 6	- upheld. These Mining Leases have priority.
GROUND 4.2	- This is the issue on which evidence was taken which is attached to my report and the file, with other exhibits.

Clause 18 is repeated so that it's provisions may be referred to:

> "Notwithstanding anything contained or implied in the Mining Act 1978 or in this Agreement or in the Mining Lease the State may grant to or register in favour of persons other than the Joint Venturers leases and other mining tenements in respect of the area subject to the Mining Lease for minerals other than those the subject of the Mining Lease and for stone sand or gravel unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the operations of the Joint Venturers hereunder with respect to bauxite assuming the taking by the Joint Venturers of reasonable steps to avoid the prejudice or interference. Upon the grant of any such lease or other mining tenement the land contained therein shall be deemed to be automatically excised from the Mining Lease (with abatement of future rent in respect to the area excised)."

In my opinion the following words can be extracted, which highlight the issues:-

> "Unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the operations of the Joint Venturers hereunder with respect to bauxite, assuming the taking by the Joint Venturers of reasonably steps to avoid the prejudice or interference".

On the applicant's evidence, I report that the application was made on the basis that prejudice to actual mining is unlikely, (as contrasted with no possibility of any prejudice), that no undue prejudice (as contrasted with no prejudice at all), is likely, with respect to bauxite mining as it is intended to be carried out (as contrasted with expressed possibilities as to bauxite mining), and assuming the taking of the reasonable steps required of the Joint Venturers to avoid the prejudice (as contrasted with them adopting an unco-operative stance).

On the objector's evidence, the objection seems to be made on the basis that the proof of the presence of commercially viable bauxite ore is sufficient to indicate a potential for undue prejudice or interference, which is enough to prevent the grant of any exploration and subsequent mining rights for anyother metal.

This seems to be saying that nobody should probe for the babies in the tub because there is a likelihood they will have swallowed some of our soap.

Clause 18 is not couched in absolute terms if such words as "likely", "unduly" and "taking ... reasonable steps" are given any meaning at all. This is the position adopted by the applicant, and I find it hard to fault. It is for the Minister to determine how robustly he will approach the question of definitive words such as these.

There seems to have been no difficulty in amending the Agreement Act in 1978 and/or 1982 to confer incidental rights to gold etc (where it is encountered), as well as bauxite, on the Joint Venturers.

It is argued that it is also necessary to amend the Agreement Act to confer rights to explore and mine for gold where it is not likely to unduly prejudice the operations of the Joint Venturers. I am not aware why it was not done at the same time on a quid pro quo basis, perhaps clause 18 was accepted as being sufficiently available to cover the rights of other explorers for other minerals in

the bauxite at the time. If so, then an amendment would still be necessary to bring about a reversion of the excised areas to the Joint Venturers as potential bauxite reserves for some time in the 21st century, in case they are of value to them then. If this was not done, there is a possibility of undue prejudice taking place at some time in the future, but not now, as the mining operations of the Joint Venturers are not in this area or currently threatened by the application, nor will be in this century.

There seems to be, on the evidence the exciting possibility of a number of additional productive gold mines in the South West mining field; and the problem of the unexpected coincidence of gold and bauxite in the same ore is a challenge worthy of resolution. On the evidence, it seems likely that gold will tend to be present in economic bauxite, and so the problem will not be resolved by "drop off" or reliquishment of areas. This seems to be the Boddington experience, but as gold mining will have ceased years before bauxite mining reaches Boddington it seems there is no undue prejudice there, and much less so for areas not in the likely path of bauxite mining in this century. The ownership of the Boddington gold mine and the Worsley Alumina operations will not necessarily be the same by this or any other time, and so the question of different ownership of the rights to two metals is already before us. In addition, the evidence is that the available portion of 70/185 i.e. the area outside the Principal Mining Area (because of excisions for ML's 70/35 and 26 and 70/750), is land other than that on the P.M.A. which has itself 50 or 100 years reserves of bauxite depending on whether refinery remains at its present size or is doubled at some time in the future. This demonstrates the unlikeliness and extent it is said, of real prejudice to the operations of the Joint Venturers, as distinct from the possible potential ore reserves of them, which is not the protected item in clause 18. In summary, the evidence and clause 18 does not support the concept that the available bauxitic land in 70/185 is in quarantine for bauxite mining for whatever period of time ML 258 SA covers that ground.

In evidence,the objectors have not demonstrated the likelihood of undue prejudice or interference with the operations of the Joint Venturers, in my opinion, simply that ore reserves exist, which is clearly the case. Whether the Joint Venturers will ever find it necessary or expedient to mine in the area, or for that matter, to re-treat the Boddington residues, is equally unclear.

Because of the need for excision of the area of any other tenements granted under

the Mining Act, the Agreement Act should be amended to provide for reversion of any such to ML 258 SA by the time the mining operations require entry onto that land in the normal course of mining, as there is a real possibility of the bauxite being of economic grade, and even though already treated for gold, those residues should be available to the bauxite miners. This is the robust definition of the protection afforded by clause 18.

Because of the interim nature of this report, I cannot make the normal simplistic recommendation for approval or refusal, but on the evidence I report that subject to reversion of bauxitic material by amendment of the Agreement Act, the application seems worthy of consideration for conditional approval.

R.F. RASMUSSEN
WARDEN

(Confidential until delivered). 6th August 1986