

*"Copyright in this document is reserved to the Crown in right of the State of Western Australia.
Reproduction except with the consent of the Attorney General is prohibited".*

IN THE WARDEN'S COURT)

HEARD: 17.03.93, 18.03.93 AND 19.03.93

HELD AT LEONORA)

DELIVERED: -2 JUN 1993

IN THE MATTER OF:

APPLICATION FOR EXPLORATION LICENCE 36/211 BY
MINERICHIE INVESTMENTS PTY LTD

OBJECTION 44/923 BY TROMEN PTY LTD

AND

OBJECTION 53/923 BY MINERICHIE INVESTMENTS PTY LTD
AGAINST

APPLICATION FOR EXPLORATION LICENCE 36/214 BY
MARK GARETH CREASY

OBJECTION 32/923 BY ARIMCO MINING PTY LTD

AND

OBJECTION 42/923 BY HOT HOLDINGS PTY LTD

AND

OBJECTION 52/923 BY TROMEN PTY LTD

AND

OBJECTION 61/923 BY MINERICHIE INVESTMENTS PTY LTD
AGAINST

APPLICATION FOR MINING LEASE 36/249 BY ROBERT
WILMOT CREASY

OBJECTION 18/923 BY MARK GARETH CREASY

AND

OBJECTION 33/923 BY ARIMCO MINING PTY LTD

AND

OBJECTION 43/923 BY HOT HOLDINGS PTY LTD

AGAINST

APPLICATION FOR MINING LEASE 36/250
BY LANNER PTY LTD

OBJECTION 19/923 BY MARK GARETH CREASY

AND

OBJECTION 24/923 BY ARIMCO MINING PTY LTD

AND

OBJECTION 45/923 BY TROMEN PTY LTD

AND

OBJECTION 54/923 BY MINERICHIE INVESTMENTS PTY LTD
AGAINST

APPLICATION FOR EXPLORATION LICENCE 36/215
BY HOT HOLDINGS PTY LTD

OBJECTIONS 25/923 ARIMCO MINING PTY LTD
AND
OBJECTION 34/923 BY HOT HOLDINGS PTY LTD
AND
OBJECTION 46/923 BY TROMEN PTY LTD
AND
OBJECTION 55/923 BY MINERICHIE INVESTMENTS PTY LTD
AGAINST
APPLICATION FOR EXPLORATION LICENCE 36/216
BY MARK GARETH CREASY

OBJECTION 20/923 BY MARK GARETH CREASY
AND
OBJECTION 26/923 BY ARIMCO MINING PTY LTD
AND
OBJECTION 35/923 BY HOT HOLDINGS PTY LTD
AND
OBJECTION 47/923 BY TROMEN PTY LTD
AGAINST
APPLICATION FOR EXPLORATION LICENCE 36/217
BY MINERICHIE INVESTMENTS PTY LTD

OBJECTION 21/923 BY MARK GARETH CREASY
AND
OBJECTION 27/923 BY ARIMCO MINING PTY LTD
AND
OBJECTION 36/923 BY HOT HOLDINGS PTY LTD
AND
OBJECTION 56/923 BY MINERICHIE INVESTMENTS PTY LTD
AGAINST
APPLICATION FOR EXPLORATION LICENCE 36/218
BY TROMEN PTY LTD

OBJECTIONS 28 TO 31/923 BY ARIMCO MINING PTY LTD
AND
OBJECTIONS 37 TO 40/923 BY HOT HOLDINGS PTY LTD
AND
OBJECTIONS 48 TO 51/923 BY TROMEN PTY LTD
AND
OBJECTIONS 57 TO 60/923 BY MINERICHIE INVESTMENTS
PTY LTD
AGAINST
APPLICATIONS FOR EXPLORATION LICENCE 36/219 TO 222
BY MARK GARETH CREASY

OBJECTION 23/923 BY MARK GARETH CREASY
AND
OBJECTION 62/923 BY HOT HOLDINGS PTY LTD
AGAINST
APPLICATION FOR EXPLORATION LICENCE 36/227
BY ARIMCO MINING PTY LTD AND ORESEARCH NL

INDEX

	PAGE/S
INTRODUCTION	..... 5
MINING LEASE APPLICATIONS OF 15TH OCTOBER, 1992	..... 6
M 36/249	..... 6
M 36/250	..... 9
EXPLORATION LICENCE APPLICATIONS LODGED ON 15TH OCTOBER 1992	..... 21
EXPLORATION LICENCE APPLICATION LODGED ON 29TH SEPTEMBER 1992	..... 44
EXPLORATION LICENCE APPLICATION LODGED ON 9TH OCTOBER 1992	..... 44
EXPLORATION LICENCE APPLICATION LODGED ON 2ND NOVEMBER 1992	..... 44
RELEVANT STATUTORY PROVISIONS	..... 44
FINDINGS OF FACT	..... 46
COUNSELS SUBMISSIONS	..... 57
CONCLUSION	..... 81
SCHEDULES	
ONE	SCHEDULE OF TENEMENT APPLICATIONS
TWO	EXHIBITS - MINING LEASE APPLICATION M36/249
THREE	EXHIBITS - MINING LEASE APPLICATION M 36/250
FOUR	EXHIBITS - FOR EXPLORATION LICENCES LODGED ON 15TH OCTOBER 1992
FIVE	EXHIBITS - EXPLORATION LICENCE APPLICATION E 36/227
SIX	SUBMISSION - ROBERT CREASY
SEVEN	SUPPLEMENTARY SUBMISSION - ROBERT CREASY
EIGHT	SUBMISSION - MARK GARETH CREASY
NINE	SUBMISSION - MARK GARETH CREASY
TEN	SUPPLEMENTARY SUBMISSIONS - MARK GARETH CREASY
ELEVEN	SUBMISSION - HOT HOLDINGS PTY LTD
TWELVE	REPLY - HOT HOLDINGS PTY LTD
THIRTEEN	SUBMISSION - LANNER PTY LTD
FOURTEEN	REPLY - LANNER PTY LTD
FIFTEEN	SUBMISSION - TROMEN PTY LTD
SIXTEEN	SUBMISSION - TROMEN PTY LTD
SEVENTEEN	SUBMISSION - TROMEN PTY LTD
EIGHTEEN	SUBMISSION - TROMEN PTY LTD
NINETEEN	SUBMISSION - TROMEN PTY LTD
TWENTY	REPLY - TROMEN PTY LTD
TWENTY ONE	REPLY - TROMEN PTY LTD
TWENTY TWO	REPLY - TROMEN PTY LTD
TWENTY THREE	REPLY - TROMEN PTY LTD

TWENTY FOUR	REPLY - TROMEN PTY LTD
TWENTY FIVE	SUBMISSION - MINERICHIE INVESTMENTS PTY LTD
TWENTY SIX	SUBMISSION - MINERICHIE INVESMTNETS PTY LTD
TWENTY SEVEN	SUBMISSION - MINERICHIE INVESTMENTS PTY LTD
TWENTY EIGHT	SUBMISSION - MINERICHIE INVESTMENTS PTY LTD
TWENTY NINE	SUBMISSION - MINERICHIE INVESTMENTS PTY LTD
THIRTY	REPLY - MINERICHIE INVESTMENTS PTY LTD
THIRTY ONE	REPLY - MINERICHIE INVESTMENTS PTY LTD
THIRTY TWO	REPLY - MINERICHIE INVESTMENTS PTY LTD
THIRTY THREE	REPLY - MINERICHIE INVESTMENTS PTY LTD
THIRTY FOUR	REPLY - MINERICHIE INVESTMENTS PTY LTD
THIRTY FIVE	SUBMISSION - ARIMCO MINING PTY LTD AND ORESEARCH NL
THIRTY SIX	REPLY - ARIMCO MINING PTY LTD AND ORESEARCH NL

REASONS FOR DECISION

WARDEN PG MALONE SM

MATTERS FOR HEARING

The matters for hearing before me are two applications for mining leases and eleven applications for exploration licences in relation to ground located in the same area.

A schedule setting out the various applications, when they were marked out or applied for, the names of the applicants and the names of the objectors appears as Schedule One to this report.

RECOMMENDATION REQUIRED

Under the provisions of Section 59(3) and 75(3) of the Mining Act, 1978 I am required as soon as practicable after the hearing of the applications, to transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein and my report recommending the granting or refusal of the exploration licence or mining lease application and my reasons for so recommending.

HISTORY OF THE GROUND

The ground the subject of the applications was previously part of Exploration Licence E 36/78.

It is not necessary to examine the history any further than to note that the land was released on the 15th October 1992.

DATES OF THE APPLICATIONS

As will be examined in more detail later in the judgment, the critical issue relevant to each of the applications was the time and date of the marking out or lodgement. Two of the exploration licence applications were lodged on the 29th September 1992 and 9th October 1992 respectively.

The mining lease applications were marked out and eight of the exploration licences were lodged on the 15th October 1992.

The last exploration licence application was lodged on the 2nd November 1992.

In view of the release date of the ground the most contentious applications were those marked out or lodged on the 15th October 1992 and therefore they will be examined first.

APPLICATIONS OF THE 15TH OCTOBER 1992

The applications for the mining leases were both marked out earlier than any of the exploration licences were lodged.

They will be looked at individually and in order of marking out.

THE MINING LEASE APPLICATIONS OF THE 15TH OCTOBER 1992

THE THREE SECOND MARKING OUT - M36/249 - ROBERT WILMOT CREASY

This application was marked out at 8.30 am and 3 seconds and applied for by one Robert Creasy.

The application was the subject of 4 objections.

I will consider the evidence in support of the application and then turn to the evidence on behalf of the objectors.

EVIDENCE ON BEHALF OF THE APPLICANT

ROBERT WILMOT CREASY is a farmer.

He went to the subject area on the 13th October 1992 with the intention of marking out some areas to be applied for as prospecting licences.

He had discussed with his brother the fact that the target area was about to become open for mining. He understood that the earliest the ground would become available was Thursday 15th October 1992.

On Monday 12th October 1992 Creasy searched four lapsed mineral claims which were located in the relevant area. He procured a surveyors map of the area and headed for it.

On Wednesday 14th October 1992, having arrived in the area and set up camp, Creasy made sure he could locate important pegs of the mineral claims which had been surveyed.

He then did some prospecting in the form of taking stream sediments and panning them off and found specks of gold.

He therefore got excited and decided that rather than pegging prospecting licences he would apply for a mining lease over the whole area.

He therefore practised what was necessary to mark out such an application by banging a peg into the ground as he was simultaneously slipping over the peg a notice of marking out.

He expected to do it within 3 seconds and was conscious that others were likely to be in the area and that priority goes to the first in time.

His view was that the area was very important and he thought that this was generally known.

A company called Grand Central Mines had drilling rigs in the area and it had made public statements that sounded exciting. During the evening Creasy wrote out the notice of marking out and signed it.

He put the time in.

He then synchronised his watch according to the time broadcast on radio by the Australian Broadcasting Commission. Creasy positioned himself at the appropriate spot at sometime around 8 am and waited.

Just prior to 8.30 am he had his watch in his hand and was ready to go.

With 5 seconds to go he started counting out.

As the second hand of his watch hit 8.30 am he drove the peg into the ground by hitting it twice.

At the same time the notice of marking out, held as it was, between his fingers was slipped onto the post.

This took under 3 seconds.

Later that evening Creasy signed a Notice of Application for a Mining Tenement - a Form 21 - and left compliance with the rest of the Mining Act requirements in the hands of his brother.

Under cross examination Creasy said the following.

This was the first time he had ever done marking out like this.

This is why he practised.

He said the notice of marking out was placed on the peg as it had been written the night before.

He denied that the notice was altered after it was placed on the peg.

He said that the notice was placed in a plastic bag but that bag was not placed inside another bag.

MARK GARETH CREASY is Robert's brother and since 1968 his entire occupation has been that of a prospector.

His enquiries had established that the subject ground was about to become open for mining.

His experience told him that there would be several applicants for exploration licences over the area.

However, as part of the area had been the subject of a survey this raised the possibility of marking out by description - that involved a single peg.

After the ground was pegged it was he who attended to filing of the notice of application and to the advertising of the application and the posting of the appropriate notices.

He ascertained the address for service of Yandal Station, a pastoral lease property located within the subject area, by obtaining the station's address as recorded by the Department of Land Administration's Pastoral Branch.

Under cross examination Creasy said the following.

Creasy admitted that he knew where the offices of Oresearch NL and Arimco Holdings Pty Ltd were located but he decided to use the address held by the Pastoral Branch for the service of the necessary notices.

LEONARD CHARLES BOLADERAS is a pastoralist.

He is the lessee of Barwidgee Station and the sub-lessee of Yandal Station.

He confirmed having received notice of the mining lease application.

EVIDENCE ON BEHALF OF THE OBJECTOR.

JAMES GREGORY EPIS is a clerk normally employed by the Leonora Shire, although during October 1992 holidays enabled him to pursue other activities.

On the 20th October 1992 he visited the mining lease application site to check on the marking out.

He located the datum peg and took photographs.

He found the notice of marking out in a bag which itself was placed in another bag. In the process of checking the marking out he removed the datum peg and found that in replacing it he had to use 4 or 5 good hits with a hand axe to return it to its original depth.

CHARLES WILLIAM PARKER is a consulting surveyor.

On the 26th November 1992 he visited the mining lease application site on instructions from Hot Holdings Pty Ltd - an applicant for the ground and an objector to the application.

He located the datum and inspected the notice of marking out and the application for a mining tenement.

He found them inside a small plastic bag, itself inside a large plastic sample bag and that in turn inside a calico sample bag. This was all wired to the peg.

He also removed the peg and found that upon replacing it that it took 8 decent blows with the blunt end of an axe to get it back to the same depth.

He did not believe that it was possible to have banged the peg in to the depth he found it at within a period of 3 seconds.

EXHIBIT EVIDENCE

See Schedule Two to this report.

THE 12 SECOND MARKING OUT - M 36/250 - LANNER PTY LTD.

This application was lodged on behalf of Lanner Pty Ltd and was the subject of 3 objections.

I turn to the applicant's evidence first.

EVIDENCE ON BEHALF OF THE APPLICANTS

MAURICE MCDOUGALL URQUHART has been a director of Lanner Pty Ltd for some 4 years.

He is experienced in marking out having pegged at least 30 tenements including those requiring precise pegging. His interest in the subject area was aroused by overhearing a conversation in September 1992.

He then physically inspected the general area and had a friend - Chad Johnson - make some enquiries about the area.

After initial confusion Urquhart established that some land in the area was due to be released as open for mining.

The release would probably occur in the week the 11th to 16th October 1992.

Urquhart decided to peg the subject area.

Urquhart therefore made some arrangements and on the evening of the 14th October 1992 departed Perth bound for the target area in the company of 3 assistants and an observer.

At midnight Urquhart synchronised the teams watches with the time signal broadcast by radio by the Australian Broadcasting Commission.

Once in the area the team stopped and practised the pegging required so as to ensure that the appropriate speed needed was appreciated and acquired.

The aim was to beat 14 seconds.

Having satisfied himself of the teams proficiency Urquhart then proceeded to the target area in order to place the necessary person at each corner peg.

In the process he decided to reduce the area being applied for. Urquhart took up a position at the proposed datum.

He filled in everything necessary on the notice of marking out except the amount of seconds.

Just before 8.30 am, his observer Clarrie Isaacs, in accordance with instructions, counted down to 8.30 am and then counted the seconds up from there.

Urquhart completed the trenches and the attaching of the notice of marking out and endorsed the seconds involved on the notice and then replaced it in the bag. He had finished the trenches and the attachment of the notice of marking out way before but at the count of 12 seconds he took the notice out of the attached bag and wrote 12 seconds on it. Urquhart then collected the others and drove to Leinster where he telephoned Neil Johnson.

He was told that the ground had become open. He then drove back to Perth. On the 21st October 1992 Urquhart flew back to Leonora in order to lodge the notice of application his intention being to do it on the last day so that it would slip through.

In the company of Neil and Chad Johnson he drove back to the application site in order to check and photograph the pegging.

On the afternoon of the following day the application was lodged.

On 20th December 1992 Urquhart in company with all of the original personnel except Peter Yaksich returned to the site and staged a reconstruction of the pegging which was recorded by a video camera. As far as the advertising and posting of notices in respect of the application was concerned that was left to Chad Johnson and his sister Adele Jones.

Under cross examination Urquhart said the following.

He said that from the time he went up to the area he intended to apply on behalf of Lanner Pty Ltd.

He had originally intended to make two of the boundaries 4 kilometres but decided, on the morning, on seeing where the drill rigs were operating, to limit the boundaries to 2 kilometres long.

The knocking in of the peg and scraping of the trenches took about 7 seconds or less.

He denied he had decided to mark out the ground after thinking that an exploration licence lodged by the Company on the 15th October 1992 was not likely to be successful.

He denied putting a notice of marking out in his name on the datum on the 15th October 1992.

He said he had waited so long to file his notice of application because he was hoping it might slip through.

He said it didn't rain on the 15th October 1992 and that there was no indication of rain.

He said he had originally drawn up the notice of marking out in his name but changed it to Lanner Pty Ltd on the morning.

The idea was to keep his name hidden.

He agreed that he intended to apply for an exploration licence over the same area but he thought that if he could mark out in less than 14 seconds a mining lease application would have more strength.

He used as a precedent an exploration licence application that had been lodged on the 9th October 1992 within 14 seconds of 8.30 am.

Under re-examination Urquhart said that although he put the Lanner Pty Ltd notice of marking out on the datum a notice in his name came to be on the post because Neil Johnson had mistakenly removed it and put back the wrong one.

CLARENCE FREDERICK ISAACS is a part-time lecturer.

He has known Urquhart for about 20 years.

In October 1992 Urquhart approached him requesting he be available for the pegging of a claim.

He agreed and travelled with Urquhart and others to Leonora on the evening of 14th October 1992.

At the application site he had to count down the seconds to 8.30 am using a stopwatch and then count up the seconds after 8.30 am.

He said Urquhart banged the peg in and dug 2 trenches before 12 seconds.

He then stuck a plastic bag containing a form on the datum.

This was at the 12 second mark.

Urquhart then removed the bag from the peg, took out the form inside the bag, and wrote the time on the form.

Under cross examination Isaacs said the following.

Isaacs said he could remember it was the 15th October 1992 because it was his sister's birthday and he missed it because of his trip to Leonora.

He said the notice of marking out was in the name of Lanner Pty Ltd and he was sure he observed that and had not just been told that.

He said the sky was clear on the day of the pegging.

RAYMOND PETER YAKSICH is a former prospector.

He is now without full time employment but is employed on a casual basis.

Urquhart whom Yaksich has known for some 25 years asked Yaksich in October 1992 to give him a hand to peg a lease. He left with Urquhart and others on the evening of the 14th October 1992.

They stopped on the other side of Southern Cross so that he and Urquhart could check stop watches.

They listened to the ABC Radio for the signal for midnight.

They had 2 stop watches each.

They started the watches at the sixth pip.

At a spot just past Anxiety Well Urquhart stopped and showed the group how to peg.

At the application site he was dropped off and required to walk south using a compass for direction and 26 rocks, one to be dropped every 100 metres.

Using a stopwatch he had been given to tell the time, at 8.30 am he knocked in a peg into the ground and dug trenches.

He did this in 9 seconds, measured by using the stopwatch.

Under cross examination Yaksich said the following.

He could recall that the pegging took place on the 15th October 1992 because it was his ex wife's birthday.

He said it didn't rain while he was there at the pegging site.

He denied that the pegging occurred later than the 15th October 1992.

Yaksich said it was about the 8th October 1992 that he was asked to assist Urquhart.

WILLIAM CRAIG SCRIMEGOUR is the proprietor of an automotive spare parts shop.

Urquhart is his next door neighbour and he has known him for some 15 years.

He was asked by Urquhart if he wanted to accompany him to Leonora.

He was asked about a week before they left.

He left Perth with Urquhart and others on the evening of 14th October 1992.

At the practice area he was slow at first but after 3 or 4 times got his time down.

He was dropped off at a particular point at the application site and waited.

Using a stop watch he had been given for time, at 8.30 am he hit the peg and dug the trenches.

It took him about 10 seconds.

Under cross examination Scrimegour said the following.

Scrimegour said the weather was fine at the time of the pegging although it was probably a bit muggy.

He didn't think there was any hint of rain.

He maintained he was sure that the date of the pegging was the 15th October 1992.

He agreed that in coming to Leonora for the court case the group had followed a very similar travel pattern to that used on the occasion of the pegging but said that nothing was a rehearsal.

NEALE GRAEME JOHNSON is a prospector and miner.

He has lived in Leonora since 1960.

He has known Urquhart for 15 years.

Johnson has no connection with Lanner Pty Ltd.

He had some discussions in September and October 1992 with Urquhart about an area known as Bronzewing which he was familiar with from having shot kangaroos

in the area 20 years previously. Urquhart phoned him about the 13th October 1992 and arranged for Johnson to leave some equipment and fuel for him as he was coming through Leonora. Johnson said he did not know what Urquhart intended to do. On the morning of the 15th October 1992 after Johnson had returned to his office from the Mines Department he received a telephone call from Urquhart asking whether the land had been released.

On being told it had been Urquhart was quite happy but didn't tell Johnson what he had done.

Later, possibly 19th October 1992 Urquhart telephoned Johnson to say that he was coming to Leonora on the plane and asked to be met at the airport.

Johnson did this on the 21st October 1992.

He was accompanied to the airport by his son Chad.

Once he arrived Urquhart told them that he wanted them to witness a mining lease that he had marked off at Bronzewing.

The three of them then drove out to the application site where Urquhart showed Johnson the notice of marking out.

It was in the name of Lanner Pty Ltd and had a time endorsed on it of 8.30 am and 12 seconds.

The pegs and trenches were then measured and photographed. Johnson returned to the application site on 23rd October 1992 in order to put the notice of application on the datum post.

Johnson said Urquhart had left the notice at his house after securing an earlier than expected trip back to Perth.

The form was left on his desk in the office in Urquhart's blue file.

On getting to the datum peg on the 23rd October 1992 Johnson, through force of habit removed the Form 20 from the bag and read it.

As he opened Urquhart's file that he was carrying the wind blew the papers around.

He collected them all up replacing the papers in the file and the papers in the bag on the datum.

Urquhart rang Johnson on 9th or 10th November 1992 and wanted to check the order of the exploration licence applications.

To do this Johnson got Urquhart's folder and opened it thereby finding a notice of marking out form in the name of Lanner Pty Ltd. Remembering the incident of the wind Johnson thought it was possible that a mix up of the papers had occurred. Urquhart asked Johnson to return to the datum and put the correct notice of marking out form on the peg and bring back whatever had been put on there by mistake.

Johnson did that the next day.

Under cross examination Johnson said the following.

He said Urquhart normally left his blue file with Johnson.

It was normally in the storeroom, but this time it was left on the desk in the study.

He presumed the file had the notice of application in it and took the file without checking it.

He swore that when he first saw the notice of marking out that it was in the name of Lanner Pty Ltd.

When he collected the papers together at the datum post on the 23rd October 1992 after the wind had blown them around he read the notice of application but did not read the notice of marking out because he didn't think he could be wrong. He denied cooking up this story.

He knew the mistake would be a problem so he worked out the day that Urquhart called him by relating it to a blown tyre incident on his dump truck.

He had written this incident in his diary.

(Having then during a short adjournment obtained this diary Johnson admitted that he was mistaken in that regard.)

He agreed that the diary entry was written some time after the incident and not on an identifiable day but rather in the middle of the diary.

He also agreed the entry had been corrected.

He had originally written "the early Nov" and then narrowed it down to the 10th November 1992.

CHAD GRAEME JOHNSON is a prospector.

He was born, and has lived all of his life, in Leonora.

He is 26 years of age and has been prospecting for 13 years.

He knows Urquhart and was asked by him about an area known as Bronzewing. Johnson knew a little bit about it.

Urquhart said he had overheard a couple of guys talking and wanted to look at a map of the area if Johnson had one.

Johnson gave him a map of the area.

Johnson agreed to check up on the area and found out that an area to the south of Bronzewing was vacant.

He advised Urquhart that the ground was vacant and because Urquhart had seen activity in the area Johnson applied for an exploration licence over the area on behalf of Minerichie Investments Pty Ltd.

This was done on the 29th September 1992 but when Johnson checked with the Mines Department about a week later he was told there was a chance that the exploration licence would not be granted.

He went with his father and Urquhart on the 21st October 1992 to check the pegging of Urquhart's claim.

He was shown the notice of marking out and that was in the name of Lanner Pty Ltd..

Johnson said he was the one that swore the affidavit in respect of advertising and the service of notices.

It was however, his sister Adele Jones, who arranged the advertising of the application and the posting of notices.

Under cross examination Johnson said the following.

He denied that if Lanner Pty Ltd was successful with its application that he would get an interest.

He said Lanner Pty Ltd was nothing to do with us - (meaning his father and Minerichie Investments Pty Ltd) - at all.

It was he who filed the notice of application and he gave it to his father.

That might have happened the night before.

On the day, Johnson said he saw that his father had the blue folder but he didn't see the notice.

EVIDENCE ON BEHALF OF THE OBJECTORS

IAN DAVID HERBISON is a geologist.

In October 1992 Herbison was working in the Bronzewing area.

Following a request from Mark Creasy he examined the datum of the mining lease application.

On the 28th October 1992 he had examined the notice of marking out and found it was in the name of Urquhart.

The time endorsed upon it was 8.30 am and 12 seconds.

He said the trenches looked to have been cut out with a mattock quite recently.

Little material had loamed into the trenches and the mounds were soft and pliable.

On the morning of the 15th October 1992 he was camped approximately 15 kilometres away from where the mining lease application was marked out.

He said that the weather was totally overcast and there was rain showers.

At the place at which he was working they had engaged the services of a consultant geologist and they were prevented by rain and showers from carrying out the work they had planned.

The rain started at about 8 am and interrupted until noon.

He said the rain was general and fairly consistent.

The rain was sufficiently heavy - to get wet - to form puddles - and to stop 3 drill rigs from operating.

Herbison said that he drove very close to the application area at about 1.30 pm and there was evidence of rain in the form of puddles and pot holes of water in that area.

Herbison formed the view that the pegging he saw on the 28th October 1992 was not compatible with having been done before rain.

He said that the trenches would have been crusted both on the walls and floor. There would have been no loose soil.

Herbison observed no evidence of crusting and that there was loose soil present.

Herbison revisited the site on the 15th November 1992 to take photographs.

He found and photographed the same notice of marking out in the name of Urquhart.

He also found that the trenches were showing the effects of the rain which had occurred in the area around the 6th and 7th November 1992.

Herbison revisited the application site on 21st January 1993 in the company of Mark Creasy and found that a different notice of marking out was on the datum. It was in the name of Lanner Pty Ltd.

Under cross examination Herbison said the following.

He said that on the 15th October 1992 the drilling rigs shut down from 10 am or 11 am until 1.30 pm or 2.00 pm.

He said one of the rigs was operating approximately 1 and 1/2 to 2 kilometres from the application site.

He agreed that none of the drilling rigs were closer than a kilometre to the site.

He said the sky was consistently cloudy.

He said there was a marked difference in the trenches between the October and November 1992 visits in terms of the apparent effect of rain on the trenches.

Herbison denied that he was looking to discredit the pegging.

He owed nothing to Creasy.

He agreed that Creasy was the co-owner of the tenement that he was working on but said he had no undertakings from Creasy except a first right of refusal of work.

He said he was not paid for his visits to the application site. Herbison agreed that while he judged from the appearance of the trenches that it had not rained after they were scraped that he could not categorically say that this was the case.

LEONARD CHARLES BOLADERAS is a pastoralist.

He lives at Yandal Station which he runs under a sub-lease.

He also leases Barwidgee Station.

He can recall the 15th October 1992.

He was at the Barwidgee homestead in the morning.

He left the homestead at about 6.45 am in order to fix a windmill at Hunts Well.

It started raining about 9 am.

He fixed the windmill and returned to the Barwidgee homestead at about 10 am and then left to travel to the Yandal station where he arrived at about 11.30 am.

There was rain all the way to Yandal station and it became progressively heavier the closer he got to Yandal.

The rain effected the surface it becoming more sticky and wet.

The rain stopped about midday.

Boladeras said that he would say the rain was not localised.

It was a totally overcast day.

He expected that there would have been rain, or at least drizzle over a widespread area.

The next day he returned to Barwidgee and said the ground showed signs of rain.

Boladeras said that on the 23rd October 1992, at the request of Mark Creasy he went in search of the mining lease datum but couldn't find it.

He returned the next day and located it.

He read the notice of marking out that was on the datum peg and observed it was in the name of Urquhart.

There was also a notice of application in the bag and he noticed a discrepancy in the areas stated in the separate notices.

He said it appeared that there was no rain on the trenches.

He said otherwise the ground looks different.

You can see the spot marks and the dirt is crusted together.

Boladeras located all pegs and trenches and said that if they had been dug on the 15th October 1992 he would have expected to have seen the effects of rain.

He said that it didn't rain between 16th and 30th October 1992.

He also observed that there was a lack of animal tracks in the area of the trenches and yet he would have expected these, had the trenches been dug on the 15th October 1992.

Under cross examination Boladeras said the following.

He kept rainfall records at the Stations and for the 15th October 1992 Barwidgee received 1.8 millimetres and Yandal 6.6 millimetres. He said the closest he came to the tenement on the day was about 6 kilometres.

He said he was not a good friend of Mark Creasy and that he had been paid for what he did.

It was his opinion that the trenches had been dug within 3 to 4 days of 24th October 1992.

It was also his opinion that the trenches had not been simply freshened up after the rain.

EXHIBIT EVIDENCE

See Schedule Three

THE EXPLORATION LICENCES OF THE 15TH OCTOBER 1992

In view of the fact that there was evidence common to all applications it was agreed that the exploration licence applications would be heard together but that each applicant would then present their own separate evidence in the chronological order in which they were recorded as having been lodged.

THE COMMON EVIDENCE

LEONARD CHARLES BOLADERAS was called to give further evidence.

He lives at Yandal Station.

He confirmed receiving a copy of Hot Holdings Pty Ltd's application for an exploration licence.

He said he received many notices and thought that they had all had been received by certified mail.

He thought that if the application was posted on the 21st October 1992 he would have received it on the following Thursday.

He also confirmed receiving a copy of Mark Gareth Creasy's applications for exploration licences.

He also confirmed receiving a copy of an application for an exploration licence from Minerichie Investments Pty Ltd.

He identified the signature on the certified mail slip associated with that application as being his wife's.

Boladeras also confirmed receiving a copy of an application for an exploration licence from Tromen Pty Ltd.

He also recalled receiving a copy of an application for an exploration licence from Arimco Mining Pty Ltd. and Oresearch NL. Boladeras said he was the registered holder of the lease of Barwidgee Station.

The registered holders of the lease of Yandal Station were Arimco Mining Pty Ltd and Oresearch NL.

He sub let Yandal from them.

Under cross examination Boladeras said the following.

He said he received with the Creasy applications a map showing the ground applied for but could not recall having received such a map with the various other applications.

He said that he had owned the lease of Yandal Station but he had sold it to Arimco Mining Pty Ltd and Oresearch NL in July 1992.

He then entered into a sub lease with those companies.

He said he received copies of notices of applications frequently. He didn't do anything about notifying Arimco Mining Pty Ltd about the notices until he had been requested by them to do so.

On the 25th November 1992 he was requested by the Administration Mining Superintendent to drop copies of tenement application notices around to him. Accordingly he now keeps the notices in a file and supplies them upon request. He regarded himself as the occupier of Yandal Station and the owner and occupier of Barwidgee Station.

He said he expected he had received copies of the applications by certified mail because that is how they invariably came.

He did not keep records of when the applications were received.

GEOFFREY GERARD HAYLES is the Mining Registrar for East Murchison Mineral Field and is stationed at the Leonora office of the Department of Minerals and Energy.

He had held that position since July 1980 and was at work on the 15th October 1992.

He had prepared a written statement about the events of that day and he read that statement into evidence and confirmed its contents as true and correct.

The statement was tendered and the material parts of it were the following.

He arrived at work at approximately 8.00 am.

Creasy was already at the eastern door of the office.

He synchronised his watch with the telephone time service and instructed Wass and Mitchell to do the same.

As he had done on previous days he took the register containing Exploration Licence 36/78 and the Wanggannoo, Mt. Keith, Darlot and Mt. McClure plans into his office, so that if he had to make any endorsements relating to the release they would not be made within public view.

At approximately 8.20 am he received a telephone call from Head Office.

It was agreed that the ground of former Exploration Licence 36/78 would be released at 8.30 am that day.

Hayles then endorsed the plans and register and returned them to their respective drawers and shelves.

Immediately prior to 8.30 am Hayles stood at the southern end of the front counter of the office with Mitchell to his left.

The doors were unlocked at 8.30 am.

First to Hayles was Mason who asked for the Wangganoo plan which he duly provided by placing it on the counter.

Mason then stated "it's gone" or "it's off" or words to that effect upon which an application was slapped on the counter by Creasy.

Hayles then endorsed 17 on the application after looking at his watch.

To his left was Mitchell who was attending to Neale and Chad Johnson and further along the counter Wass was dealing with Epis. Mitchell was endorsing an application lodged by the Johnson's when another was put on the counter by one of the Johnson's.

Hayles endorsed 24 on that after checking his watch.

Andrei stated something to Creasy like "you don't need this one" but was told by him to lodge it.

She put the application on the counter followed by Mason with another application.

Hayles endorsed these 33 and 36 respectively after checking his watch.

Creasy then dropped another 2 applications on the counter which were both endorsed by Hayles 51 after checking his watch.

When no further applications were forthcoming Hayles collected all of them.

He noticed the Johnson's applications were undated and these were handed back to Chad Johnson who entered the date.

Hayles made a further note on these applications that when the date was completed was 8-32-52 and 8-32-58.

Hayles then collected all applications together and allocated numbers to the applications in order of their receipt.

Under cross examination Hayles said the following.

He said he wrote the statement on the afternoon of the 15th October 1992.

He conceded the possibility that Mason had said "it's okay".

He couldn't recall Creasy saying "take mine".

It was possible he said it.

It was possible he had stepped back from the counter just before receiving applications.

He didn't recall it and didn't think he had.

He couldn't recall saying "I take it you gentlemen wish to lodge an application".

He also couldn't recall looking up before receiving an application.

Hayles said Mason was first in the office and first to the counter.

Creasy was the first to slap an application down.

Hayles said he did not hesitate nor did he look down the counter. He said he had synchronised his watch using the telephone time service and had asked Kim Wass and Janine Mitchell to do the same.

He had not supervised them doing it.

He saw Janine Mitchell serving one of the Johnsons and saw another application so he reached across and wrote 24 seconds on it.

He thought Creasy's application hit the counter before Johnson's.

He couldn't recall seeing Epis when he started noting times on the applications.

He didn't look.

KIM MAREE WASS is an assistant clerk at the Leonora office of the Department of Minerals and Energy and was at work on the 15th October 1992.

She also had prepared a written statement about the events of that day and read it into evidence and confirmed its contents as true and correct.

The statement was tendered and the material parts of it were the following.

Just before 8.30 am she went to the west door of the office.

Standing at the west door were Mason, Epis, Andrei and Harry's mate.

Standing at the east door were Creasy, Neale and Chad Johnson.

When Hayles told her, Wass and Paula Power, who was at the east door opened the doors at the same time.

Wass then went and stood behind the counter nearest to the photocopier.

Mitchell was to her right and Hayles to the right of Mitchell.

Epis came to the counter and placed an application directly in front of her and said "I want to lodge this".

Wass noted the time on the application to be 8.30 am and 14 seconds from the digital watch she was wearing and which she had checked with the Telecom time service that morning.

Chad and Neale Johnson lodged applications in front of Mitchell. Hayles processed the applications lodged by Creasy, Mason and Andrei.

Under cross examination Wass said the following.

She wrote on the application that she had received in ink.

She had opened the west door nearest the counter and then went straight back to the counter.

She didn't know who was first.

She had a watch supplied to her and she checked it earlier that morning.

She knew Epis through her work.

Epis came to the counter and said he wanted to lodge an application.

She looked at her watch and wrote down the time.

The application had been placed on the counter directly in front of her.

She said that she had walked back to the counter - she hadn't run.

It hadn't been decided previously where the staff would position themselves - it just fell into place.

She said she hadn't watched Epis come into the office.

She was uncertain as to where Neil Johnson was when she was taking the Epis application.

She couldn't recall that anything had been said.

JANINE ALISON MITCHELL is a level one officer employed by the Department of Minerals and Energy Leonora office.

She has held this position since March 1991 and was at work on the 15th October 1992.

She also had prepared a written statement about the events of that day and she read that into evidence and confirmed its contents as being true and correct.

The statement was tendered and the material parts of it were the following.

Prior to 8.30 am she checked her digital watch with the Telecom time service.

At approximately 8.29 am Hayles requested the 2 front doors of the office be manned. Wass stood at the west door and Power stood at the east door.

Mitchell stood behind the counter with Hayles on her right.

The doors were opened at Hayles request.

Wass returned to the counter and stood at Mitchell's left.

Mason was first through the western door and called out half way to the counter for the Wanggannoo tenement plan.

Hayles went to the plan drawers to get it.

Epis lodged an application with Wass without looking at the plan.

Mitchell received Chad Johnson's application at 8.30 am and 19 seconds as indicated on her watch.

Chad Johnson then passed a second application to Hayles who received it.

After all the applications were received Hayles noticed the 2 applications from Chad Johnson weren't dated.

These were given back to Johnson to date and a second time was recorded on the application.

Under cross examination Mitchell said the following.

She said the first person around the corner was Mason.

She could recall Epis arriving at the counter and saying to Wass can I lodge this.

She said there were no pre-allocated positions.

The first person to approach her was Chad Johnson.

She said the application lodged by Epis was definitely on the counter before Johnson and that Epis got to the counter before Johnson.

SEPARATE EVIDENCE

THE FOURTEEN SECONDS LODGEMENT - E36/215 - HOT HOLDINGS PTY LTD

This application was recorded as being lodged at the Department of Minerals and Energy Leonora office at 8.30 am and 14 seconds on behalf of Hot Holdings Pty Ltd.

JAMES GREGORY EPIS was called to give further evidence.

He was instructed by Leith Beal of Hot Holdings Pty Ltd to lodge an exploration licence application on that company's behalf.

On the 15th October 1992 he arrived at the office of the Department of Minerals and Energy between 20 and 25 past 8 am.

Six other people were already waiting there.

He stood at the door closest to the Police Station with Mark Creasy and Chad Johnson.

The doors to the office were opened and he proceeded to the counter and asked for his application to be accepted.

He didn't hear anybody say anything.

He said he didn't think he could say who got to the counter first but he placed the first application on the counter.

Epis had attended at the office for 25 consecutive working days previously and because of the appearance of a lot more interest he thought it best to take a punt and lodge an application.

Under cross examination Epis said the following.

He said that having got to the counter and put his application on it he looked down the counter.

On the counter was just the application by Johnson.

Creasy was in the middle of the plan.

A man then not known to him - identified at the hearing as Alefounder was somewhere in the group.

Epis says Creasy put his application down but didn't hear him say anything.

He said Creasy had held and looked at the plan.

Epis denied that he had a faulty recollection of events.

He maintained that he was in front of Johnson and did not lean over him.

Epis said he had received the application on 13th September 1992.

He discussed the application with Beal before receiving the application.

He was paid \$2000.00 for his role.

LEITH BEAL is a mining tenement consultant and has been so for 13 years.

He has had an interest in approximately 70 tenements.

He is the managing director of Hot Holdings Pty Ltd.

His wife is a co-director.

Both he and his wife are the sole shareholders.

He became interested in the area the target of his company's application because; of its proximity to Mt. McClure; from some discussions with a mining engineer and from some discussions with the people from the Company who had previously held the ground.

He was aware the ground was to be surrendered and he was familiar with the procedures involved.

He prepared an application on the 11th September 1992 believing the ground would be forfeited or deemed surrendered.

The documents were then sent to Epis in Leonora.

Once the application was lodged he attended to the advertising and service of notices requirements.

He had received from the Mining Registrars office a standard form letter and a list of pastoral stations with Barwidgee and Yandal Stations highlighted.

Both stations were listed as L.C. and L.M Boladeras.

The address given for Barwidgee Station was care of Yandal Station.

Beal later received a personal phone call from Leonard Boladeras inquiring as to who were the directors of Hot Holdings Pty Ltd.

In about January 1993 he discovered that Arimco Mining Pty Ltd and Oresearch NL were the proprietors of Yandal Station.

He therefore sent copies of the application to them.

He said that both company's were already aware of the application.

A George Miguel from Arimco Mining Pty Ltd and a Malcolm Tyrer from Oresearch NL had both separately contacted him within 3 days of 15th October 1992.

Beal said he had a firm of consulting geologists who he used regularly. He thought the exploration program he lodged was reasonable.

He said that along with his wife he had the resources to fund the proposed exploration.

Under cross examination Beal said the following.

He said his house was not mortgaged but was security for a loan for the purchase of a caravan park.

The house was worth \$250,000 to \$260,000.

The debt was \$1.6 million.

Beal held 1.5 million fully paid shares in Ordax Resources and 150,000 options.

He also had shares in Capital Resources.

Sixty percent of the shares were in his name and forty percent in private companies in which he was a director and shareholder.

These companies were Runyan Pty Ltd and Beal Trading Pty Ltd.

He had \$85,000 in the bank.

The caravan park was held by company's with associated trusts and included the freehold.

Beal and his wife were directors along with a Gary James Roper and his wife.

Beal said the money in the bank had come from a \$100,000 loan to him from a Bill Galbraith.

He estimated his expenditure commitments on other tenements held by him as being approximately \$90,000.

He said he would fund the exploration of the subject licence through the cash in the bank and shares.

He had however, no plans to sell his shares but would if necessary.

He said his house would become unencumbered by the end of the month because his interest in the caravan park was being acquired by a brother of Mr Roper.

There was no formal agreement in respect of this.

Beal said he had spoken to Epis several times between the 11th and 15th October 1992 as he was monitoring the situation.

He said he spoken to Epis on the 14th October 1992 and said that, when Creasy was there, if he had to lodge an application without checking he should do it, and Beal would "wear" the \$820 filing fee.

Beal said he obtained a copy of the pastoral lease of Yandal Station when he found out there were other owners.

He said he had been aware of Arimco Mining Pty Ltd and Oresearch NL for several years and was aware of the location of their offices.

He said Hot Holdings Pty Ltd application was advertised twice in the Kalgoorlie Miner newspaper because 14 seconds was left off the 8.30 am time in error. The corrected advertisement was re-advertised by the newspaper at no cost to him.

EXHIBIT EVIDENCE

See Schedule Four to this report.

THE SEVENTEEN SECOND LODGEMENT - E36/216 - MARK GARETH CREASY

This application was recorded as lodged at the Department of Minerals and Energy Leonora office at 8.30 am and 17 seconds on behalf of Mark Gareth Creasy.

MARK GARETH CREASY was called to give further evidence.

He had first prospected the Yandal greenstone belt in 1976.

He returned in 1978 and made two discoveries of new areas of gold mineralisation.

He concluded that Yandal was highly prospective.

He returned in 1978 and prospected.

He found visible gold and traced it back to the outcrop - the gold mineralisation.

He tried to peg the area but it was not available so he waited and hoped.

Through inquiries he ascertained that the area previously subject to Exploration Licence E36/78 was going to become open for mining.

He monitored the situation on a daily basis awaiting the plotting of a relinquishment number.

He, by mistake, missed the 8th October 1992 and arranged for an agent in Leonora, Glen Baker, to go to the Mines Department the next day to lodge an application to his behalf.

Bakers instructions were that if anyone showed an interest in the ground Baker was to immediately lodge an application.

An application was lodged but the ground had not been released.

Creasy then organised with Irene Andrei to attend daily the Leonora office and he couriered to her an application.

On Monday 12th October 1992 Creasy prepared 10 applications.

He travelled by aeroplane to Leonora on the 14th October 1992 arriving at 8.25 am.

He went immediately to the Mines Department. The ground was not open but a relinquishment number had been plotted.

This meant that a release was imminent.

Later that day he obtained a photocopy of the relevant sheet.

Creasy then engaged Harry Mason to assist him in making the application.

Mason had to familiarise himself with the photocopied map.

On the 15th October 1992 Creasy, Mason and Alefounder travelled to the Leonora office arriving at about 7.45 am.

Noting that one could see directly into the offices Creasy arranged for Alefounder to stand at the window to observe and note the precise time at which he lodged his application.

He gave Alefounder a timing device for the purpose.

Creasy then took up a position in front of the east door and waited. Mason took up a position in front of the west door and Alefounder stayed in the vicinity of the window near the west door.

Creasy had three applications, Mason one.

Creasy was joined by Chad Johnson behind him and Epis behind Johnson.

Creasy said the doors were then flung open.

Mason came rapidly through the west door and headed for the counter saying loudly "Wanggannoo sheet please".

Creasy came through the east door and walked rapidly across to the counter.

As he walked he observed Hayles rapidly pull out a map and swing it around onto the counter.

The map was on the counter a split second before Mason arrived there,

Creasy was 2 paces behind.

Mason bent down to examine the map.

Creasy reached the counter and placed his applications which he held in his right hand on the counter.

As he did this Mason said "its open" or words to that effect.

Creasy slapped an application down and said "take mine" in a loud voice.

At this point Hayles stepped back , glanced to his left, returned Creasy's gaze and said in a leisurely voice "I take it you gentlemen wish to lodge an application?".

Creasy said "yes, yes".

Hayles then glanced again to his left.

Hayles then took Creasy's application and scribbled on it by putting the number 17 in pencil on it.

Hayles then turned to his left ignoring Mason and Andrei and his other 2 applications and walked northward towards the window.

He returned and collected the applications from Mason and Andrei and his further 2 applications.

Creasy spoke to Hayles a little later asking whether there was going to be a ballot. Hayles said no and that the first person who makes the application gets the ground.

Creasy said that he had obtained the address for Yandal Station from the Pastoral Board. He said he had liquid assets in excess of \$1 million.

Under cross examination Creasy said the following.

Creasy said he did not intend to lodge an application come what may.

He intended to lodge if the ground was open.

If anyone made a dash to the counter he would lodge.

As he walked no one walked past his field of vision.

Creasy said he had all 3 applications on the counter before Mason said "it's open - it's on" - or words to that effect.

As it was said he picked up his top application and advanced towards Hayles and slapped it down.

Creasy said the applications were in an open folder which he placed on the counter.

Creasy maintained that Hayles didn't record the correct time for the lodgement of his application.

He agreed he had not made any complaints nor taken legal advice on this.

Creasy said he had removed the applications from his folder.

The second two applications were protruding from an envelope.

Creasy agreed that he had Mason and Andrei lodge applications so that he could increase his chances of being first.

He also agreed he had considered that it would increase his chances in any ballot.

HARRY MASON is a consultant geologist.

He said that in discussions on the evening of 14th October 1992 Creasy considered the applications would go a ballot and therefore thought the more applications in the better.

On the 15th October 1992 Mason took up a position in front of the west door.

Immediately behind him was Andrei and behind her Neale Johnson.
He could see that Creasy was at the east door.
Close behind him was Chad Johnson and behind him Epis.
When the doors opened Mason stormed through.
As he turned to head towards the counter he yelled "Wanggannoo sheet please"
and had eye contact with Hayles.
Hayles turned to the map cabinet and got a map and swung it up onto the counter.
Mason arrived at the counter a split second after that.
He had walked fast, very fast.
He glanced immediately at the area on the map and had no difficulty locating it.
He turned to Creasy who was a pace or so behind him and said "it's okay".
Creasy then lent forward and said "take mine".
Creasy had the application in his hand and slapped it down and said "take mine".
Mason had a quick glimpse to see where the other players were.
He could see everybody to his right.
A metre away was Chad Johnson, a body length away from him was Neale Johnson and 2 metres from the counter was Epis.
None of those named were at the counter at that time.
Mason said that when the application was slapped under his nose Hayles glanced along the table.
His first action was that he stepped back.
He glanced along the counter for a split second.
Hayles then grinned at them and said quite leisurely "I take it you gentlemen wish to lodge an application?".
Creasy said "Yes, yes".
Mason said "yes".
Mason thrust forward.
Creasy was the louder of the two.
After Creasy said "yes" Hayles glanced again.

Epis was further along and was passing an application over to a girl.

Mason believed, but couldn't swear, that Neale Johnson had an application on the counter.

Hayles then took up Creasy's application and walked along the counter.

Mason didn't notice Hayles writing on the application.

Hayles completely ignored Mason and Andrei who was to his left.

Hayles then worked his way back along the counter picking up his application and Andrei's.

Mason said Creasy's application was first, his was next, Neale Johnson's next and that there was no doubt that Epis's was last.

Under cross examination Mason said the following.

He said that when Creasy slapped his application on the counter Neale Johnson was a metre from the counter and Epis was 2 metres away.

There was no doubt that Johnson's application was before Epis.

Mason said he estimated it took him 5 or 6 seconds to reach the counter.

Mason said he had known Creasy personally for several years and in the business sense for 2 years.

He had done consultancy work for him.

On the 14th October 1992 he wasn't doing any paid consultancy for Creasy but in the preceding 1 1/2 weeks he was in a joint venture in the field studying the geology.

Creasy hired him to assist with lodging the application.

Mason said he had no recollection of Creasy placing his folder on the counter first.

As he recalled it Creasy took the folder from somewhere on his person.

He said when he looked up that Epis was third in a diagonal line from the counter.

He was looking in Mason's direction and gave Mason the impression he was trying to look at the map.

He said Epis was the last person to pass an application across.

Mason said he didn't see Hayles write on Creasy's application.

If Hayles had written on it there was a chance that he could have missed it but a slim chance.

Mason said Hayles was not a little leisurely, he was very leisurely.

He said the time for his application - 33 seconds - should have been 19 seconds.

Under re-examination Mason said that at some point he had seen Creasy's folder on the counter.

This was after his application was taken up.

He was not able to say when Creasy put the folder on the counter.

JOHN LESLEY ALEFOUNDER is a friend of Mason's and was in the Leonora area giving Mason a hand.

He has known Mason for 2 years.

On the 15th October 1992 he accompanied Creasy and Mason to the Leonora office to have a look, not for any specific purpose.

He knew Creasy was going to lodge an application and he had never seen it done before.

Once at the office Creasy then organised for Alefounder to stand at the window with a timing device to watch what happened.

He had to note down the time Creasy offered the application.

The GPS unit was hung around Alefounder's neck.

According to that device the Mines Departments doors were opened at 8.29 am and 57 seconds.

Mason was at the west door, near him.

Andrei was behind Mason and Neale Johnson behind her.

Mason went into the offices rather quickly.

Hayles swung around and got a map out of a cabinet slightly behind him.

Creasy was 2 strides behind Mason.

Creasy arrived at the counter and leaned forward and offered an application in no uncertain terms.

Alefounder glanced down at his unit and it read 8.30 am and 7 seconds.

Creasy had banged his folder on the counter.

Hayles step back.

Alefounder looked down at his unit.

When he looked up Hayles walked forward and took Creasy's application.

At this time he observed another application go across the counter near his end.

Under cross examination Alefounder said the following.

The other application he saw going across the counter was from Epis who he didn't know at the time.

He said the Epis application was the first to be taken up by the Mines Department staff.

It was taken up before Creasy's.

He said he didn't note the time when Hayles picked up Creasy's application.

Alefounder said he glanced at the unit when Creasy slapped his folder down on the counter.

He agreed that Creasy took an application from the file.

He said the Epis application was not placed on the counter but handed to the girl.

The handing over took place before Hayles took up Creasy's application.

Alefounder said Epis's application was the first one handled by staff.

He said that at the time Creasy was proffering his application there was only Creasy and Mason at the counter.

The others arrived later in a diagonal line.

IRENE ANDREI is a resident of Gwalia.

She received a telephone call from Creasy about a week before the 15th October 1992.

She received papers from him on the 10th October 1992 and started going to the Department of Minerals and Energy Leonora office from the 12th October 1992.

On the 15th October 1992 she arrived at the office between 20 and 25 past 8 am.

Creasy was at the western door and Mason at the eastern door.

She stood behind Creasy and Neale Johnson was behind her.

When the doors opened Mason walked very quickly inside and straight towards the counter.

After entering she heard Mason say "Wanggannoo sheet please."

By the time Mason reached the counter the map was there.

Mason then said "it's okay" or something like that and Creasy, who had arrived at Masons right shoulder, immediately put his paper - slapped it onto the desk saying "take mine".

She said that Mason then put his paper on the counter.

Andre asked Creasy if she should still lodge her application and then immediately put hers on the counter.

Her application was not picked up immediately.

She said that she had known Hayles for 10 years and that he and Epis were good "mates".

They were seen together at their homes and at the hotel.

Under cross examination Andre said the following.

She didn't consider Hayles delayed in taking up her application.

She said she walked quickly in the door and crossed paths with Creasy.

As she was still getting to the counter Creasy was putting his application on the counter.

She didn't see Hayles step back.

She was in a position to see him.

She didn't hear him say anything.

She said she regarded herself as a friend of both Epis and Hayles.

She said they were known as friends - they were more than acquaintances having been seen socially together.

Under re-examination Andrei said she wouldn't necessarily have known if Hayles said anything.

GEOFFREY GERARD HAYLES was called to give further evidence.

He said he was a close friend of Epis.

He had known him for 13 years and they had been good friends for 8 to 10 years.

He didn't see Epis come into the office on the 15th October 1992.

Mason took his attention.

He wrote his statement on the afternoon of 15th October 1992.

He may have said something to Mason.

He couldn't recall stepping back and looking towards the window and didn't believe he did.

Hayles was aware Epis was coming into the office every morning.

He was not aware of what Epis was being paid.

Hayles found out at 8.20 am about the release.

He denied it was possible he looked up to see his friend there.

Hayles said he didn't believe he picked the application up.

He said he wrote on it.

He could not see that there had been any delay.

It was possible he became distracted but he couldn't recall having done so and didn't accept that.

He denied being leisurely.

Hayles said his friendship had not affected his duty - he didn't accept he delayed or was distracted.

He dealt with the first person to the counter.

EXHIBIT EVIDENCE

See Schedule Four to this report.

THE NINETEEN SECOND LODGEMENT -E36/217 - MINERICHIE INVESTMENTS PTY LTD

This application was recorded as being lodged at the Department of Minerals and Energy Leonora office at the 8.30 am and 19 seconds on behalf of Minerichie Investments Pty Ltd.

EVIDENCE OF BEHALF OF THE APPLICANTS.

NEALE GRAEME JOHNSON was called to give further evidence.

He is a director of Minerichie Investments Pty Ltd.

The shareholders are his wife, his son and himself.

On the 15th October 1992 he got to the Mines Department office at about 20 past 8am.

His son Chad was with him.

He stood behind Mason at the western door.

He said behind him was Andrei.

When the doors were opened he followed Mason in.

He heard somebody call for the map.

He went straight to the counter where Mitchell was positioned on the other side.

The map was just hitting the table.

He heard someone say "it's on".

He pushed his application across the table.

Epis bent over him.

He could see Creasy and his papers didn't hit the counter before his.

The two applications were put down together.

He said Mitchell picked up his application and Wass picked up Epis's application at the same time.

He didn't hear anything said by Creasy.

He didn't see Hayles.

Hayles then asked if anyone else was waiting.

Johnson said yes and pushed the Troman Pty Ltd application forward.

Hayles later required the dates to be put on the application and the correct amount had to be filled in on the cheque.

Johnson said he was experienced in prospecting, sampling and drilling.

He was on his fifth open cut mine and had won some 10,000 ounces of gold.

He owned mining equipment including 2 excavators, loaders, a dump truck and a drilling rig.

He was in a position to service the \$50,000 required to be expended on the exploration licence.

Under cross-examination Johnson said the following.

He denied Andrei was in front of him at the door.

He was definitely second in line.

When he got to the counter he looked both ways and there was nothing on the counter.

He put his application on the counter and then pushed it as he heard the words "it's on".

He was ahead of Chad.

Epis came from behind.

He said his application and Epis's application were picked up identically.

He said he was not intending to lodge his application by placing it on the counter.

It was only when he heard "it's on" that he put the application forward.

He didn't know when Creasy put his application on the counter.

He said the Troman Pty Ltd application was underneath the Minerichie Investments Pty Ltd application.

It was given to Hayles.

CHAD GRAEME JOHNSON was called to give further evidence.

On the 15th October 1992 he was behind Creasy at the east door.

He followed Creasy into the office when the doors were opened.

He heard the map asked for by someone while the map was produced his father had his papers on the service desk.

Johnson looked at the map and saw the word release and said "it's on".

Mitchell then grabbed an application and so did Wass.

Hayles was calling out figures.

Johnson said Epis came up after his father got there and said he wanted to lodge these.

He didn't see what Creasy was doing or hear him say anything.

He said Hayles collected all the forms and then asked him to come back to date the notices of application.

He said his sister Adele Jones did the advertising.

He became aware of another address for Yandal Station so he caused letters to be sent to Oresearch NL and Arimco Holdings Pty Ltd.

He tendered a statement of assets and liabilities showing Minerichie Investments Pty Ltd had access to \$1.4 million.

There would be no difficulty meeting the annual expenditure of approximately \$50,000 required for the exploration licence.

Under cross examination Johnson said the following.

He denied the map was already on the counter before Mason got there.

He didn't hear Mason say "it's on".

He said he was the one who said that.

Johnson heard Epis say "I want to lodge these" when Epis was a step or so away from the counter.

Under re-examination Johnson said the necessary accompanying documents which were omitted at the lodgement were lodged before he had received a reminder letter from the Mining Registrar.

ADELE MAY JONES is the daughter of Neale and sister of Chad Johnson.

She has no formal association with Minerichie Investments Pty Ltd.

She does the family business bookwork.

She caused the advertising of the application and posted the various notices.

She assisted Chad Johnson to prepare the schedule of assets.

The information came from business records and was true and correct.

MAURICE MCDUGALL URQUHART was called to give further evidence.

He is a director and shareholder of Tromen Pty Ltd.

He had little to do with the paperwork of the application.

The proposed works programme was filed on the 22nd October 1992.

The objectors conceded his financial viability.

EXHIBIT EVIDENCE

See Schedule Four to this report.

EXPLORATION LICENCE APPLICATION E36/211 BY MINERICHIE INVESTMENTS PTY LTD - LODGED 29TH SEPTEMBER 1992.

This application was mentioned at the beginning of the hearing. The application was not objected to.

It was thought that there may be a small area of ground open for mining within the area applied for and it was submitted that it should be recommended for granting.

EXPLORATION LICENCE APPLICATION E36/214 BY MARK GARETH CREASY - LODGED 9TH OCTOBER 1992.

This application was also mentioned at the beginning of the hearing. Counsel for both Minerichie Investments and Tremen Pty Ltd indicated that the objections would not be pursued.

EXPLORATION LICENCE APPLICATION BY ARIMCO MINING PTY LTD AND ORESEARCH NL - LODGED 2ND NOVEMBER 1992.

By agreement no witnesses were called by the applicant or either of the objectors in this matter.

The applicant simply tendered by consent a number of exhibits which are set out in Schedule Five of these reasons.

EXHIBIT EVIDENCE

See Schedule Five to this report.

RELEVANT STATUTORY PROVISIONS OF THE MINING ACT 1978 AND REGULATIONS

The contentious matters which emerged from the hearing were:

- compliance with the marking out provisions
- compliance with proper service of the applications

- financial ability
- the question of priority.

EXPLORATION LICENCES

The requirements for exploration licences are set out in Division 2 of the Act - Sections 57 to 69 inclusive.

Section 58 sets out the application requirements.

Section 58(4) provides that within 14 days of the lodging of an application the applicant shall serve prescribed notice of the application on the owner and occupier of the land to which the application relates.

MINING LEASES

The requirements for mining lease are set out in Division 3 of the Act - Sections 71 to 85 inclusive.

Section 74 sets out the application requirements.

Section 74(4) imposes an identical requirement to that imposed by Section 58(4) referred to above.

NOTICE OF APPLICATION TO BE GIVEN TO LESSEE OF PASTORAL LEASE

Section 118 requires that where land comprised within an application for a mining tenement is the subject of a pastoral lease then the applicant must within 14 days of lodging the application post a copy of the application together with a map on which are clearly delineated the boundaries of the land in respect of which the mining tenement is sought by registered post or certified mail to the holder of that lease at this usual or last known place of abode or business.

MARKING OUT

Section 105 provides that before an application for a mining tenement other than an exploration licence is made the land the subject of the application must be marked out.

Regulation 59 provides that a tenement is marked out by

- (a) fixing firmly in the ground at each corner of the tenement a post projecting at least 1 metre above the ground.

- (b) by cutting 2 clearly identifiable trenches at least 1 metre long from each post in the general direction of the boundary lines and
- (c) by fixing firmly to the datum post a notice of marking out.

Regulation 61 provides that where the boundaries of a proposed tenement are identical with any surveyed land the land can be marked out by fixing at a corner of the boundaries a datum post to which a notice of marking out is affixed.

PRIORITY

Section 105A provides that where more than one application is received for a mining tenement the applicant who first complies with the initial requirement has priority over every other applicant.

Section 105A(3) provides that where a Warden is satisfied that 2 or more applicants complied with the initial requirement at the same time priority shall be determined by ballot conducted by the Warden in open court.

Section 105A(4) provides that compliance with the initial requirement for exploration licences is lodging the application and for mining leases marking out the land concerned in the prescribed manner.

FINDINGS OF FACT

MINING LEASE APPLICATION - M36/249 - R W CREASY

The application was marked out on the 15th October 1992.

It was marked out by description within 3 seconds.

At the time the notice of marking out had not been amended.

At some time after the 20th October 1992 the notice of marking out was amended to delete the words "exactly the same as former" and insert the words "boundaries and area identical to". I found no significance in a possible discrepancy in how the notice of marking out was attached to the datum peg.

The application was lodged on the 16th October 1992.

I find that a copy of the application was sent to Barwidgee Station by certified mail on 22nd October 1992 addressed to L.C. and L.M. Boladeras, C/- Yandal Station Via Leonora and that the copy was received by the lessee of that station.

I find that a copy of the application was sent to Yandal Station addressed to Oresearch NL and Arimco Mining Pty Ltd, 18 Emerald Terrace, West Perth WA 6005 by certified mail on 22nd october 1992.

The application was advertised in the West Australian newspaper on October 24th 1992 and October 28th 1992.

I accept the evidence of Epis that he photographed the unamended notice of marking out on the 20th October 1992.

I found his evidence of what was necessary to replace the peg as not probative.

I found the evidence of Parker as to what was necessary to replace the peg unconvincing and not probative.

I find the peg was firmly fixed in the ground and that it otherwise complied with the marking out regulations.

MINING LEASE - M36/250 - LANNER PTY LTD

I am not satisfied on the balance of probabilities that the marking out of this application took place on the 15th October 1992.

I accept the evidence of Herbison and Boladeras that the morning of 15th October 1992 saw generally overcast conditions and rain spread over a period of hours.

I reject Urquhart evidence that it didn't rain and that there was no indication of rain in the area.

While I accept that Urquhart, Isaacs, Scrimgeour and the Yaksich brothers may well have marked out in the manner they described I am not satisfied that it took place on the 15th October 1992.

I find that at the time of marking out Urquhart placed on the datum peg a notice of marking out in his name.

I reject his evidence that he placed a notice on the peg in the name of Lanner Pty Ltd.

Urquhart gave inconsistent and unconvincing evidence as to when and why he decided to change the application from his personal application to that of Lanner Pty Ltd and that reflected adversely on his credibility.

I accept that he could have dug the trenches and placed the notice of marking out on the datum peg within the 12 seconds nominated.

I reject Urquhart's explanation of not wanting to lodge the notice of application until the last day so that it would slip through as implausible and it reflected adversely on his credibility.

I accept that although Isaacs may well have acted as an observer for the marking out he described I find that it did not occur on the 15th October 1992.

I reject his evidence that the sky was clear on the day of the marking out.

I reject his evidence that he dated the trip from his sister's birthday as unconvincing when contrasted with the evidence of Herbison and Boladeras as to the weather on the 15th October 1992.

I reject his evidence that he observed the notice of marking out to be in the name of Lanner Pty Ltd as unconvincing.

I accept that although Yaksich may well have assisted in the marking out in the manner he described I find that it did not occur on the morning of 15th October 1992.

I find that it did rain in the area on the 15th October 1992 and therefore conclude from Yaksich's evidence that it did not rain while he was at the pegging site to mean that he was not there on the morning of the 15th October 1992.

I reject his evidence that he dated his trip by reference of his ex-wife's birthday as unconvincing.

Yaksich repeated insistence at one stage in his evidence that he measured time with a compass suggested he was preoccupied with reciting his evidence rather than giving it freely from recollection.

I accept that although Scrimgeour may have well assisted in the marking out in the manner he described, I find that it did not occur on the morning of 15th October 1992.

His evidence that the weather was probably a bit muggy but that there was no hint of rain could not be reconciled with the clear evidence about the weather from

Herbison and Boladeras. His evidence about the dating of the trip from his work diary was unconvincing. No diary was produced.

Scrimgeour experienced obvious difficulty in recalling events of a few days earlier and yet supposedly recalled the events of the 15th October 1992 clearly. This reflected adversely on his credibility.

I reject Neale Johnson's account of how it was possible for the wrong notice of marking out to have got on the datum post as being too incredible and convenient to be believable.

Urquhart's evidence was that he endorsed the 12 seconds on the Lanner Pty Ltd notice after he placed the notice on the peg and yet the supposed unused notice in Urquhart's name managed to be endorsed as well.

The production of Johnson's diary during cross examination far from bolstering his evidence made it look even less believable and more manufactured.

I reject his evidence that he saw the Lanner Pty Ltd notice of marking out on the peg on the 21st October 1992 as being too convenient.

I reject Chad Johnson's evidence that he saw the Lanner Pty Ltd notice of marking out on the peg on the 21st October 1992 as being too convenient.

I accept Herbison evidence as to the weather conditions of the 15th October 1992 and the finding of the notice of marking out in the name of Urquhart on the datum on the 15th November 1992.

I found his evidence as the state of the trenches to be too indefinite to be significantly helpful.

I accept Boladeras's evidence as the weather conditions of the morning of the 15th October 1992.

I accept his evidence that he found a notice of marking out in the name of Urquhart on the 24th November 1992 on the datum post.

I find that a notice of marking out in the name of Lanner Pty Ltd was placed on the datum post at some stage after the 15th November 1992.

Again although his evidence was similar to Herbison's concerning the state of the trenches I found it too indefinite to be significantly helpful.

I find that the application was lodged on 22nd October 1992.

I find that a copy of the application was sent by certified mail to Barwidgee Station addressed to L.C. and L.M. Boladeras, C/- Yandal Station, Leonora 6438 on 23rd October 1992.

I find that the application was advertised in the Kalgoorlie Miner on 29/10/92.

EXPLORATION LICENCE APPLICATIONS LODGED ON THE
15TH OCTOBER 1992

I set out first my findings as to the lodgement of the various applications and then set out my findings so far as they effect the individual applicants separately.

LODGEMENT OF THE APPLICATIONS

I find that Hayles was advised of the release of the land at 8.20 am on the 15th October 1992.

I find that just before 8.30 am Wass took up a position at the west door of the office and Power took up a position at the east door.

At the east door was Creasy and behind him were Chad Johnson and Epis in that order.

Wass was mistaken in placing Neale Johnson at that door.

At the west door was Mason. Behind him was Andrei and Neale Johnson in that order.

I reject Neale Johnson's evidence that he was in front of Andrei.

I found Mason and Alefounder's evidence that the doors were opened before 8.30 according to their timing devices to be irrelevant because the Departmental watches were solely used to record time.

I find that the first person in the door of the office was Mason.

I find that as he approached the counter he called for the Wanggannoo plan.

I find that Hayles very quickly located the plan and placed it on the counter.

I find that the plan was on the counter before Mason had reached it.

I find that Creasy followed Mason into the office and that both of them headed for Hayles.

I find that the next person into the office was Chad Johnson and that he headed in the direction of the plan in order to look at it.

I find Neale Johnson headed towards the counter and was slightly behind Chad.

I find that Epis headed straight for the counter and was slightly behind Neale Johnson.

Mason looked at the plan.

Mason then said "it's okay".

By this stage Creasy had reached the counter and upon hearing Mason's words he slapped his folder on the counter.

He then removed one application from the folder and pushed it across the counter to Hayles who wrote 17 seconds on it. In the meantime Epis had headed straight for Wass at the end of the counter and handed his application straight to Wass who endorsed 14 seconds on the application.

Also in the meantime Neale Johnson, who had headed straight for Mitchell, but who was waiting for a signal from his son Chad in order to lodge the application pushed it across the counter to Mitchell who wrote 19 seconds on it.

Mitchell was mistaken in her evidence that Chad Johnson approached her.

Neale Johnson then pushed another application across to Hayles who wrote 24 seconds on it.

I find Epis was mistaken about Alefounder being inside the office.

I find that upon approaching the counter Creasy had a file with the various applications inside that file.

I cannot rule out the possibility that Hayles may have stepped back at the time Creasy slapped his file on the counter.

I reject the evidence of Creasy and Mason that Hayles acted in a leisurely fashion and that he said "I take it you gentlemen wish to lodge an application".

Creasy throughout his evidence and the hearing generally appeared intense and singular.

His conduct and evidence left no doubt as to his pre-occupation with obtaining the ground the subject of his application.

He was altogether too close to have his evidence regarded as credible without independent support.

His unsophisticated approach to attacking the credibility of Hayles re-inforced my view that Creasy regarded the end as more important than the means.

He allowed his counsel to float an allegation that Hayles had deliberately engineered a situation to try to ensure a friend lodged his application first.

The basis of that allegation was simply that Epis was a good friend of Hayles.

There was no suggestion that Hayles or Epis had anything to gain by what was alleged.

No one but Mason and Creasy heard the words supposedly uttered by Hayles and 6 other people were in a position where they could have heard.

There was clearly no delay in Hayles ensuring the plan was put in front of Mason before he reached the counter.

Hayles could easily have delayed the production of the plan if that was his intention.

Hayles had no control over the order at the door.

Hayles also did not exercise any control over the positioning of the staff at the counter.

Creasy and Mason by heading to Hayles left Mitchell and Wass free.

No criticism of Mitchell was made and yet she received Johnson's application 2 seconds after Hayles received Creasy's despite the fact that she was positioned at the counter at all times and did not have to provide the plan.

If one says that is because the delay was caused by Johnson, like Creasy he did not say that, but like in the case of Creasy it can be inferred.

It is not suggested that Hayles communicated in any way to Epis that the ground was open.

Epis made it clear he was determined to sacrifice the filing fee if necessary and lodge his application without consulting the plan if he thought it appropriate to do so.

I find that Hayles did not ignore Andrei as alleged by Creasy and find that she did not attempt to file her application until instructed by Creasy to do so.

I reject Mason's evidence that Creasy had his application in his hand and find that it was within his folder.

His reflection under re-examination was not convincing.

I reject Mason's evidence that Epis was trying to look at the map and find that Epis went straight to the counter and asked to file his application.

I find Mason was wrong in his evidence that Hayles did not write on Creasy's application.

I find Mason was wrong in his evidence that Creasy did not have his folder in his hand.

I reject Mason's evidence that Hayles ignored both he and Andrei.

I find Mason was wrong in his evidence that Epis's application was clearly last.

I reject Mason's evidence that Hayles was not just leisurely but very leisurely.

I accept Alefounder's evidence that Creasy arrived first at the counter and banged his folder on to it.

I accept that the reading on his unit may well have been at that stage 8.30 am and 7 seconds.

Bearing in mind his evidence that the doors were opened at 8.29 am and 57 seconds this is perhaps consistent with the staff watches reading 8.30 am and 10 seconds.

However I cannot and do not make a finding that this was so.

I find that Alefounder looked down at his unit at what, with the benefit of hindsight, was the wrong time.

I find that Creasy slapped his folder onto the counter but did not tender his application until it had been removed from the folder.

I find that in the process of looking down Alefounder lost the opportunity to observe precisely when it was that Creasy's application was taken up.

He was therefore forced to guess and I place no reliance on his evidence in that regard.

I accept his evidence that Epis's application was handed to Wass whereas Creasy's application was placed on the counter.

I infer that the other application observed by Alefounder to go across the counter near his end was Neale Johnson's first application - that relating to Minerichie Investments - being passed to Mitchell.

I accept Andrei's evidence that she was in front of Neale Johnson at the west door.

I accept Andrei's evidence that she asked Creasy whether she should still lodge her application.

I accept her evidence that Hayles did not delay in taking up her application.

I reject Neale Johnson's evidence that he was in front of Andrei at the west door.

I reject his evidence that he was the first person to push an application across the table.

I reject his evidence that Creasy's paper did not hit the counter before his and find that Creasy's applications were in his folder which was slapped onto the counter before Johnson's arrival.

I reject Johnson's evidence that Epis leaned over him and say that Epis went straight to Wass while Johnson headed for Mitchell.

I reject his evidence that his application was put down at the same time as Epis.

I find that in arriving at the counter Johnson was awaiting advice from his son Chad before he lodged his application.

I find that it was only after Johnson had decided from what he saw and heard that he proffered his first application - that for Minerichie Investments Pty Ltd.

I find that this occurred after Epis and Creasy's applications were lodged.

I do not accept Chad Johnson's evidence that he looked at the map and said "it's on."

I reject his evidence that Hayles was calling out figures.

I find that Chad Johnson was required by Hayles to date the applications for Minerichie Investments Pty Ltd and Tromen Pty Ltd.

I find that this occurred at 8-32-52 and 8-32-58 respectively.

As far as the findings in relation to the individual applications are concerned they are as follows.

E36/215 -HOT HOLDINGS PTY LTD

TIME OF LODGEMENT:

8.30 am and 14 seconds on 15th October 1992.

DATE AND METHOD OF ADVERTISING:

23rd October 1992 - Kalgoorlie Miner newspaper.

29th October 1992 - Kalgoorlie Miner newspaper.

DATE AND METHOD OF SERVICE ON PASTORALIST:

21st October 1992 - by certified mail to L.C. and L.M. Boladeras, C/- Yandal Station via Leonora.

E36/216 - MARK GARETH CREASY

TIME OF LODGEMENT:

8.30 am and 17 seconds on 15th October 1992.

DATE AND METHOD OF ADVERTISING:

23rd October 1992 - West Australian newspaper.

26th October 1992 - West Australian newspaper.

28th October 1992 - West Australian newspaper.

26th October 1992 - Kalgoorlie Miner newspaper.

28th October 1992 - Kalgoorlie Miner newspaper.

DATE AND METHOD OF SERVICE ON PASTORALIST:

22nd October 1992 - by certified mail to Barwidgee Station, L.C. and L.M.

Boladeras, C/- Yandal Station, via Leonora.

22nd October 1992 - by certified mail to Yandal Station, Oresearch NL, Arimco Mining Pty Ltd 18 Emerald Terrace, West Perth.

E36/217 - MINERICHIE INVESTMENTS PTY LTD.

TIME OF LODGEMENT:

8.30 am and 19 seconds on 15th October 1992.

DATE AND METHOD OF ADVERTISING:

26th October 1992 - Kalgoorlie Miner newspaper.

DATE AND METHOD OF SERVICE ON PASTORALIST:

19th October 1992 - by certified mail to Barwidgee and Yandal, L.C. and L.M.

Boladeras, Yandal Station, via Leonora.

E36/218 - TROMEN PTY LTD.

TIME OF LODGMENT.

8.30 am and 24 seconds on 15th October 1992.

DATE AND METHOD OF ADVERTISING:

23rd October 1992 - Kalgoorlie Miner newspaper.

DATE AND METHOD OF SERVICE ON PASTORALIST:

19th October 1992 - by certified mail to Barwidgee and Yandal, L.C. and L.M.

Boladeras, Yandal Station, via Leonora.

E36/219 - MARK GARETH CREASY.

TIME OF LODGMENT:

8.30 am and 33 seconds.

DATE AND METHOD OF ADVERTISING:

26th October 1992 - Kalgoorlie Miner newspaper.

DATE AND METHOD OF SERVICE ON PASTORALIST:

As for Application E36/216.

E36/220 - MARK GARETH CREASY.

TIME OF LODGMENT:

8.30 am and 36 seconds.

DATE AND METHOD OF ADVERTISING:

As for Application E36/219.

DATE AND METHOD OF SERVICE ON PASTORALIST:

As for Application E36/216.

E36/221 - MARK GARETH CREASY.

TIME OF LODGMENT:

8.30 am and 51 seconds.

DATE AND METHOD OF ADVERTISING:

As for Application E36/219.

DATE AND METHOD OF SERVICE ON PASTORALIST:

As for Application E36/216.

E36/222 - MARK GARETH CREASY.

TIME OF LODGMENT:

8.30 am and 51 seconds.

DATE AND METHOD OF ADVERTISING:

As for Application E36/219.

DATE AND METHOD OF SERVICE ON PASTORALIST:

As for Application E36/216.

COUNSELS SUBMISSIONS

It was agreed by all counsel, at the close of evidence, and given the various time constraints, that written submissions would be made.

Accordingly, orders were made providing that written submissions be filed and served and then any replies to those submissions be filed and served.

I have included the submissions and replies as schedules to this report.

For the sake of completeness I note for the record that I received the submission and replies on behalf of the Creasy applications in sealed envelopes.

I propose to canvas each of the submissions so as to deal with each of the matters raised.

For the sake of coherence I have adopted the same numbering formats used by the parties in their submissions.

APPLICATION M36/249

APPLICANTS SUBMISSIONS

R W CREASY - SCHEDULE SIX

POINT ONE

Save for the Epis and Parker evidence casting doubt on the evidence that the peg could have been driven in to the ground within 3 seconds and the evidence that the notice of marking out was altered I accept this submission.

POINT TWO

I accept this submission.

POINT THREE

I refer to my findings of fact and comments in Point One above and note that I did not find the evidence of Epis or Parker probative.

POINT FOUR

I refer to my findings of fact and say that I found that the Form 20 had been altered. This reflected adversely on the credibility of Creasy. I do not accept that the alteration was necessarily not one of substance but accept that in the particular circumstances an amendment of the description may not be of significance. In my view the amendment should not have been made other than through the normal amendment process, under the Act and Regulations.

POINT FIVE

I refer to my comment in Point Four and say that it is not simply a question of whether the land is sufficiently identified but also as to what precisely is being applied for. There is a possibility that the description "exactly the same as" used in respect of a claim produces a different result to one described as "boundaries and area identical to".

POINT SIX

I accept that service on the holder of a pastoral lease is not part of the initial requirement referred to in Section 105A.

I also accept the points raised in respect of the address for service raised.

POINT SEVEN

I will deal with this question in the conclusion to this report.

OBJECTORS SUBMISSIONS

HOT HOLDINGS PTY LTD - SCHEDULE ELEVEN - pages (2) to (5) inclusive.

POINTS (a) AND (b)

I accept these points with the reservation that Hunter Resources -v- Melville is authority for the proposition that those requirements that can be strictly complied with, must be so complied with - see Pard Holdings Pty Ltd -v- Goldfan Ltd.

POINT (c)

I refer to my findings of fact and my comments in respect of Point Four of the applicants submissions and say that I accept this submission.

POINT (d)

The Epis photographs are not very clear.

I do not accept that they show there were no "amendments" to the Form 20 but it depends on what is meant by that Expression.

It appears to me that "amendments" were made to the "4070" and "4071" figures.

I cannot find that the document previously read "36/4064" or the seconds "1" instead of "3". The Epis photograph is not clear enough and in my view it would be wrong for me to embark on my own forensic document examination exercise.

Expert evidence could have been lead in that regard.

I accept that the "amendment" evidence reflects adversely on Creasy's credibility.

I do not accept that the omission of the full name of the applicant or the reference to Poverty Flats Exploration are of any significance.

POINT (e)

I do not find that the MC number on the form 20 was "36/4064".

POINT (f)

I refer to my findings of fact and note that although I did not believe Creasy concerning the amendment of the Form 20 I did not find the evidence of Epis or Parker to be persuasive.

TROMEN PTY LTD - SCHEDULE FIFTEEN

POINTS ONE TO THREE INCLUSIVE

Noted.

POINT FOUR

I do not accept this submission.

I find the description of boundaries on the Form 20 read "exactly the same as former surveyed mineral claims MC36/4070, MC36/4071, MC36/4066, MC36/4067."

POINT FIVE

I refer to my findings of fact and comments in Point Four.

POINT SIX

I find that the Form 20 was affixed to the datum post and part of the description of land was altered at a later date. This does not constitute a failure to comply with Section 105.

POINTS SEVEN, EIGHT AND NINE.

I refer to my earlier comments.

POINT TEN

I will deal with this proposition in the conclusion to my report.

MINERICHIE INVESTMENTS PTY LTD - SCHEDULE TWENTY FIVE

These submissions are identical to those of Troman Pty Ltd discussed above.

ARIMCO MINING PTY LTD AND ORESEARCH NL - SCHEDULE THIRTY FIVE

These objectors main objection was in relation to the question of service of notice of the application upon the pastoralist and was made in relation to all applications except that of Lanner Pty Ltd.

Given that situation I propose to deal separately with that objection as it applies to each affected application later in this report.

APPLICANTS REPLY

R W CREASY - SCHEDULE SEVEN.

POINT ONE

Noted, but with reservations.

POINT TWO

I refer to my comments at Point (D) in respect of the Hot Holdings Pty Ltd submissions.

POINT THREE

As above.

POINTS FOUR AND FIVE

I accept these submissions.

OBJECTORS REPLIES

HOT HOLDINGS PTY LTD - SCHEDULE TWELVE

POINT ONE (a)

I refer to earlier comments acknowledging the challenge to Creasy's credibility and the probative value of Epis and Parker.

POINTS ONE (b) TO (d) INCLUSIVE

I refer to my earlier comments.

TROMEN PTY LTD - SCHEDULE SIXTEEN

All of these submissions are the subject of comments by me earlier in relations to other submissions.

APPLICATION M36/250

APPLICANTS SUBMISSIONS - LANNER PTY LTD - SCHEDULE THIRTEEN

POINTS ONE TO SEVEN INCLUSIVE

Noted.

POINTS EIGHT AND NINE

I accept that there is evidence upon which I could make the findings of fact referred to so far as the fixing of posts and cutting of trenches is concerned.

I refer to my findings of fact and say that I conclude that it did not take place on the morning of the 15th October 1992.

POINT TEN

I refer to my findings of fact and say that I reject the evidence of Urquhart and Neal Johnson so far as the affixing of the Form 20 is concerned.

POINT ELEVEN

I refer to my findings of fact and comments on Points Eight and Nine above.

POINTS TWELVE TO NINETEEN INCLUSIVE

I refer to my findings of fact and say that matters flowing from this make it unnecessary for me to deal individually with this point. My recommendation will be set out in the conclusion to this report.

OBJECTORS SUBMISSIONS

M C CREASY - SCHEDULE EIGHT

POINT ONE

I do not accept this submission.

POINT TWO

I do not accept all of this submission, there being no evidence that it could have been done as claimed.

POINT THREE

There was evidence available upon which an inference could be drawn that the marking out was done by Peter Yaksich within the time required.

POINT FOUR

I do not accept that Isaacs was "quite definite" on the writing of the whole of the time, although he gave evidence suggestive of that. I do not necessarily accept the submissions as to the completion of marking out as far as the inserting of time

is concerned but in view of other conclusions reached by me I do not propose to deal with this.

POINT FIVE

I refer to my findings of fact and say I accept these submissions.

POINT SIX

I will deal with these matters in the conclusion of my report.

POINT SEVEN

I refer to my findings of fact and say I preferred the evidence of Herbison and Boladeras as to the weather conditions and concluded the marking out did not take place on the morning of the 15th October 1992.

POINT EIGHT

Noted.

HOT HOLDINGS PTY LTD - SCHEDULE ELEVEN - PAGES (5) TO (7) INCLUSIVE.

POINT (a)

I do not accept this submission.

POINT (b)

I refer to my findings of fact and earlier comments and say I accept these submissions.

POINT (c)

I am not able to conclude that the "pegging expedition" did not occur but only that it didn't occur on the evening and morning of the 14th and 15th October 1992.

ARIMCO MINING PTY LTD AND ORESEARCH NL

As foreshadowed earlier this objection will be dealt with later in my report.

APPLICANTS REPLY

LANNER PTY LTD - SCHEDULE FOURTEEN

POINTS (B) TWO AND THREE

I refer to my earlier comments and say I accept these submissions.

POINTS (B) FOUR AND FIVE

I refer to my earlier comments.

POINT (B) SIX

I did not find Urquhart to be a credible witness. Neither did I find Isaacs evidence that he saw the name Lanner Pty Ltd on the Form 20 convincing. Neil Johnson's evidence about the Form 20 was not credible.

POINT (B) SEVEN

This is matter which should have been raised with Herbison under cross examination. I do not regard it as significant.

POINT (B) EIGHT

Noted.

POINTS (B) NINE AND TEN

I refer to my finding of fact and say that given my views of the credibility concerning Urquhart and Johnson I am not able to accept these submissions.

POINT (B) ELEVEN

I accept that Urquhart's evidence was that he lodged the Form 21 and that Chad Johnson did not say that he had.

POINT (B) TWELVE

Although I accept the submission in general terms I refer to my findings of fact and say I was satisfied on the evidence that the weather conditions were not those as described by Urquhart, Isaacs, Raymond Yaksich or Scrimegour. I preferred the evidence of Herbison and Boladeras in that regard.

POINT (B) THIRTEEN

Although I have some reservations about taking such judicial knowledge in my view the matter doesn't arise. I refer to my comments in relation to point twelve.

POINT (B) FOURTEEN AND FIFTEEN

I do not accept these submissions.

POINT (B) SIXTEEN

When I contrasted the evidence of Urquhart, Isaacs, Yaksich and Scrimegour as to the evidence of the weather conditions in the area with the evidence given by

Herbison and Boladeras I was left in no doubt that they could not be reconciled. I preferred the evidence of Herbison and Boladeras.

POINT (B) SEVENTEEN

While I accept this submission it nevertheless cannot be reconciled with the evidence of the applicant and his witnesses. The closest to reconciliation was Scrimgeour who said it was "probably a bit muggy". He went on to say however that there was no hint of rain.

POINT (B) EIGHTEEN

I refer to my comments about this matter earlier.

POINTS C, D, E AND F

Noted.

OBJECTORS REPLIES

M C CREASY

Counsel made no further submissions.

HOT HOLDINGS PTY LTD - SCHEDULE TWELVE - PAGES (3) AND (4).

POINT (a)

I am of the view that evidence is available upon which one can make a reasonable inference that the pegging took place within the time claimed. There was evidence that he did undertake the task.

POINT (b)

I accept this submission.

POINTS (c) AND (d)

Noted.

TROMEN PTY LTD - SCHEDULE TWENTY

POINT ONE

Noted.

POINTS TWO TO FOUR INCLUSIVE

I do not accept these submissions for the reasons set out earlier in answers to submissions.

POINT FIVE

I will deal with this question in the conclusion to this report.

MINERICHIE INVESTMENTS PTY LTD - SCHEDULE THIRTY

These submissions are a restatement of the submissions made by Troman Pty Ltd and commented on above.

ARIMCO MINING PTY LTD AND ORESEARCH NL.

The original submission and reply will be considered later in my report.

EXPLORATION LICENCE APPLICATIONS E36/215 TO E36/222 INCLUSIVE.

As mentioned earlier in this report, at the hearing of this matter all these applications were effectively heard together and accordingly I propose to consider the submissions on a global basis.

HOT HOLDINGS PTY LTD - SCHEDULE ELEVEN - PAGES (7) TO (18).

POINT III(a)

I accept the dating of the application the 11th September 1992 does not invalidate it.

POINT III(b)

In my view there is no question that each of the exploration licences of the 15th October 1992 were lodged with the Registrar within the meaning of Section 105A. The Registrar was present and the staff were acting under his direction. He also clearly collected up all of the applications.

POINT III(c)

I refer to my findings of fact and say as follows.

In my view Mitchell and Wass were mistaken in parts of their evidence.

The "independence" of Hayles was clearly under challenge.

I accept the submission as far as the alleged delay of Hayles is concerned.

I note but do not entirely agree with the submissions concerning Creasy's alleged failure to complain.

I accept the submission in so far as it provides a possible and plausible explanation as to why the Epis application was received first.

I refer to the submission concerning Wass's evidence and say that I agree except to note that she was mistaken in her placement of Neale Johnson at the doors of the Mining Registrar's office.

I agree with the doubt as to Mason's testimony and refer to my findings of fact.

I accept the submission concerning Alefounder's evidence.

POINT III(d)

I propose to deal with this question later in the report.

POINT III(e)

I propose to deal with all submissions concerning service later within this report.

POINT IV(a)

Noted.

POINTS IV(b) AND (c)

I do not accept these submissions.

POINT V(a)

The question will be dealt with later in the report.

POINT V(b)

Noted.

POINT V(c)

The statement is not part of the application. The lack of date is also not in my view an invalidating omission.

POINTS VI AND VII

Noted.

POINT VIII(a)

This question will be dealt with later in the report.

POINTS VIII(b) AND (c)

Noted.

M G CREASY - SCHEDULE NINE

POINT ONE

Noted.

POINT TWO

I do not agree that the question of time is simply one of fact. In my view it involves mixed questions of fact and law. That is, what is the meaning of the expression "at the same time" in Section 105A(3) and did the parties lodge their applications at the same time. I accept however the thrust of the submission which is that the question of the actual time of lodgment is one of fact.

POINT THREE

I refer to my findings of fact set out earlier in my report.

POINT FOUR

I refer to my findings of fact and my comments concerning the submissions of Hot Holdings Pty Ltd set out at Point (c) above and say that I do not accept this submission. I however cannot rule out the possibility that Hayles may have stepped back.

POINT FIVE

I refer to my findings of fact and say this submission glosses over the obvious weakness in Alefounder's evidence. He looked away from the action so as to read the GPS timing device at the time that Creasy slapped his folder onto the counter. This was not the same action as lodging the application because Creasy needed to remove the application from the folder before proffering it.

POINT SIX

I refer to my findings of fact and say I do not accept this submission.

POINT SEVEN TO FOURTEEN INCLUSIVE

I refer to my findings of fact and say that there are discrepancies between the submissions and the evidence given. For example, as to the distance Creasy was behind Mason, the Creasy application being in his hand or in his folder, what Creasy slapped on to the counter and when Creasy removed the application from the folder.

POINT FIFTEEN

I refer to my findings of fact and say that apart from the possibility of Hayles stepping back I did not accept Creasy and Mason's evidence as to Hayles behaviour.

POINT SIXTEEN

I refer to my findings of fact and say that Alefounder's evidence became unreliable when he glanced down at the unit. From there he was estimating. I refer to my findings of fact and say that I found Creasy and Mason to be unconvincing witnesses. The obvious weakness in the evidence lies in the fact that Mason had to look at the map having walked fast - very fast - to the counter. He then had to look at the map and then indicate the ground was open to Creasy. Creasy then had to remove his application from the folder and tender it to Hayles. Given this scenario it is not unreasonable, assuming Hayles was correct in his time of 17 seconds to see that Epis who came straight in the door, straight up to the counter and handed his application straight to Wass. Although I make no such finding in this regard Mason's evidence was that it took him 5 to 6 seconds to reach the counter. Accepting Epis was behind he had on that scenario 8 seconds to make up the gap and lodge his application. It is interesting to note again without saying that it forms part of any findings, that the "lodge if interest was shown" instructions of Creasy to his agent, Glen Baker, on the 9th October 1992 resulted in that application being received in 14 seconds. Alefounder's evidence was that the Epis application was the first to be taken up by the Mines Department staff. Creasy and Mason have blamed the delay on Hayles and I reject their evidence, in that regard.

POINT SEVENTEEN

Andrei's evidence was not as corroborative as is suggested. She said she wasn't watching the others and that she didn't go there to observe. Her purpose was to lodge an application. She glanced at the map and didn't observe what Hayles was doing. She said after a "short while" Hayles picked up the application. None of this evidence assists decisively, because unlike Mason and Creasy, Andrei cannot

and does not say that the delay was created by Hayles. Her evidence does not rule out the scenario referred to by me at Point Sixteen above.

POINT EIGHTEEN

This is a less than compelling submission. Often witnesses are forced to recall events without the aid of any notes. It was by agreement that the statements of each of the staff were tendered. Hayles was cross examined and the inaccuracy or inadequacy of his statement was put to him. I preferred his evidence on the question of delay to that of Creasy and Mason.

POINT NINETEEN

I refer to my findings of fact and say I found Mason to be wrong in a number of respects. Alefounders evidence was simply of its nature flawed. I conclude that Creasy's and Mason's evidence is to be rejected as to Hayles causing the delay.

POINT TWENTY

I refer to my findings of fact and say that the floating of this superficial and yet most serious allegation reflected adversely on the credibility of Creasy and Mason.

POINT TWENTY ONE

One of the crucial questions is who was the first in time to lodge his application but another, and related question, is whether applications were lodged at the same time.

POINT TWENTY TWO

This submission is premised on saying that Creasy lodged his application by slapping his application on the counter. I refer to my findings of fact and say that Creasy slapped his folder onto the counter. Alefounder looked down too early.

POINT TWENTY THREE

The evidence of Alefounder was that the Epis application was the first taken up by the Mines Department staff. This is not inconsistent with the scenarios discussed at Point Sixteen.

POINT TWENTY FOUR

I agree that Epis was mistaken about Alefounder's presence in the room. I did not rely on his evidence as to Johnson.

POINT TWENTY FIVE

I refer to my findings of fact and say I did not rely on Johnson's evidence.

POINT TWENTY SIX

I agree that Chad Johnson's evidence could not be relied upon.

POINT TWENTY SEVEN

Noted as having been discussed in relation to earlier points.

POINT TWENTY EIGHT

(Not included).

POINT TWENTY NINE

I will deal with these questions later in my report.

POINTS THIRTY AND THIRTY ONE

I do not agree with this submission.

POINT THIRTY TWO

In my view such an example is not helpful. Suppose the Mining Registrar was legitimately delayed for whatever reason and was late getting to the office. Is an application thrust into his hands as he strides towards the office to have been taken to have been "lodged with the Mining Registrar". These events did not occur.

POINT THIRTY THREE

This point adds nothing to the reasoning in Points Thirty and Thirty One.

POINT THIRTY FOUR

I do not agree with this submission.

POINT THIRTY FIVE

(Not included).

POINT THIRTY SIX

I accept this submission.

POINT THIRTY SEVEN

I do not accept this submission.

The statement is not part of the application.

The need to fill in the cheque does not in my view constitute an invalidating flaw.

POINT THIRTY EIGHT

I accept this submission.

POINT THIRTY NINE

I do not accept these submissions.

The question of service will be referred to later. The map used by Creasy may have been better than others but I do not find that the absence of such a map was an invalidating feature.

The defect in the advertisements is not material.

I am quite satisfied that Hot Holdings Pty Ltd would be able to fund the exploration of the area being sought.

POINT FORTY

The matters raised in these submissions will be dealt with in the conclusion to my report.

POINT FORTY ONE

As I am required to do by the Act I will be forwarding my recommendations to the Minister along with a report as to the evidence, exhibits etc., and the report will include these submissions.

TROMEN PTY LTD - SCHEDULE SIXTEEN

POINTS ONE TO THREE INCLUSIVE

Noted.

POINT FOUR

I do not accept this submission.

POINTS FIVE TO THIRTEEN INCLUSIVE

The various question raised in this matter will be dealt with in the conclusion to this report.

POINT FOURTEEN

I do not accept this submission. I did not accept Neale Johnson's or Mason's evidence. On Johnson's evidence the Minerichie Investments Pty Ltd application was picked up at the same time as the application by Hot Holdings Pty Ltd.

Johnson admitted he did not intend to lodge the applications when he got to the counter. They were only to be lodged if the ground was open.

TROMEN PTY LTD - SCHEDULE SEVENTEEN

POINTS ONE TO THREE INCLUSIVE.

Noted.

POINT FOUR

I do not accept this submission.

POINT FIVE

These questions will be dealt with later in the report.

POINT SIX

I accept this submission.

POINTS SEVEN TO THIRTEEN INCLUSIVE

These submission will be dealt with in the conclusion to my report.

POINT FOURTEEN

See my comments on Point Fourteen of the earlier Troman Pty Ltd submissions above.

TROMEN PTY LTD - SCHEDULE EIGHTEEN

POINTS ONE TO FOUR

Noted.

POINTS FIVE TO THIRTEEN

The questions raised in these submissions will be dealt with in the conclusion to the report.

POINTS FOURTEEN AND FIFTEEN

I accept these submissions.

POINTS SIXTEEN AND SEVENTEEN

These submissions will be dealt with in the conclusions to this report along with the other submissions concerning service of the applications.

POINT EIGHTEEN

The question raised in this submission will be dealt with in the conclusion to my report.

TROMEN PTY LTD - SCHEDULE NINETEEN

These submissions are a restatement of earlier submissions and accordingly have been dealt with earlier.

REPLIES

M.C. CREASY - SCHEDULE TEN

POINTS ONE, TWO AND THREE-ONE TO THREE-FOUR

In my view nothing new arises from these submissions that need by the subject of comment.

POINT THREE-FIVE

I do not accept this submission.

POINTS THREE-SIX TO THREE-EIGHT INCLUSIVE

Nothing new arises for comment.

POINT FOUR

This question will be dealt with later in my report.

POINTS FIVE, SIX AND SEVEN

These submissions will be dealt with later in the report.

POINT EIGHT

I accept this submission

POINT EIGHT-ONE

I do not accept this submission

POINT EIGHT-TWO.

This question will be dealt with in the conclusion to my report.

POINT EIGHT-THREE

I do not accept this submission

HOT HOLDINGS PTY LTD - SCHEDULE TWELVE - pages (5) to (27)

POINT III

Noted.

POINTS IV (a) TO (k)

Nothing new is raised.

POINT IV (l)

I do not accept this submission. I place no significance on the evidence concerning the timing device used by Alefounder except to say it distracted him at a crucial point in his observations.

POINT IV (m)

I do not find this submission helpful.

POINT IV (n)

I accept this submission. I see as difference stages Creasy placing his file initially on the counter, then removing an application from the file and pushing it onto the counter, Hayles writing on it and Hayles later collecting all the applications.

POINT IV (o)

I accept this submission.

POINTS IV (p), (q) and (r)

Nothing new is raised.

POINT IV (s)

I did not rely on Mason's evidence.

POINT IV (t)

I accept this submission.

POINT IV (u)

This issue was not explored at trial and I find that Hayles wrote on the form the time he had just observed on this watch.

POINT IV (v)

I refer to my earlier comments.

POINTS IV (w), (x), (y), (z) (aa), (z)(bb), (z)(cc)

Nothing new is raised.,

POINTS IV (z) (dd), (ee), (ff), (gg), and (hh)

I accept these submissions

POINTS IV (z) (hh), (ii) and (jj)

These matters will be dealt with later in the report.

POINTS IV (z) (kk) and (ll)

I accept these submissions.

POINT IV (z) (mm)

This question will be dealt with later in the report.

POINTS V (z), (b), (c), (d) and (e)

I accept these submissions.

POINTS V (f) and (g)

These questions will be dealt with later in the report.

POINTS VI AND VII (a)

Noted.

POINT VII (b)

This question will be dealt with later in the report.

POINT VIII

These submissions will be dealt with later in the report.

CONCLUSION POINTS ONE TO FOUR INCLUSIVE

These questions will be dealt with later in the report.

TROMEN PTY LTD - SCHEDULE TWENTY ONE

POINTS ONE TO FOUR

These questions will be dealt with later in the report.

TROMEN PTY LTD - SCHEDULE TWENTY TWO

POINTS ONE AND TWO

Noted.

TROMEN PTY LTD - SCHEDULE TWENTY THREE

POINT ONE

Noted.

POINT TWO

This question will be dealt with later in the report.

POINT THREE

The submission concerning the GPS device does not assist.

POINT FOUR

I accept this submission.

POINT FIVE

I refer to my earlier comments and say I do not accept the argument therefore I need not comment further.

POINTS SIX TO THIRTEEN INCLUSIVE

These questions will be dealt with in the conclusion to my report.

TROMEN PTY LTD - SCHEDULE TWENTY FOUR

POINTS ONE TO SEVENTEEN INCLUSIVE

Nothing new is raised.

POINTS EIGHTEEN TO TWENTY-THREE INCLUSIVE

These matters will be dealt with later in my report.

MINERICHIE INVESTMENTS PTY LTD - SCHEDULES TWENTY FIVE TO TWENTY

NINE AND THIRTY ONE TO THIRTY FOUR INCLUSIVE

These submissions and replies are a restatement of the Tromen Pty Ltd submissions and replies referred to above. Accordingly I refer to my earlier comments.

I assume that the reference at Point 15 in Schedule Twenty Seven should have referred to the evidence of Chad Johnson and Adele Mae Jones and to Exhibit M Two.

THE OBJECTIONS CONCERNING SERVICE OF NOTICE ON THE PASTORALISTS -
ARIMCO MINING PTY LTD AND ORESEARCH NL

As foreshadowed earlier given the specific nature of these objections I propose to deal with the submissions and replies together.

ARIMCO MINING PTY LTD AND ORESEARCH NL SUBMISSIONS - SCHEDULE
THIRTY FIVE

POINTS ONE TO SEVEN INCLUSIVE

Noted.

POINT EIGHT

These questions will be dealt with by me later in the report.

POINTS NINE AND TEN

Noted.

POINTS ELEVEN TO EIGHTEEN INCLUSIVE

I accept these submissions.

POINT NINETEEN

I do not necessarily accept this submission.

POINTS TWENTY TO TWENTY-TWO INCLUSIVE

I accept these submissions.

POINTS TWENTY-THREE TO THIRTY FOUR INCLUSIVE

I do not accept these submissions. In my view the service as deposed to by Creasy did not comply with the provisions of Section 118. The object of the Section is clearly to give notice by post.

The Section is not in my view designed to make applicants go through artificial exercises such as sending separate notices to holders of pastoral leases if the method they have adopted is reasonable. Here Oresearch N.L. and Arimco Mining Pty Ltd were the joint holders and sending a jointly addressed application copy to an appropriate address was compliance with the Section requirements.

The description "usual or last known place of abode or business" clearly contemplates multiple possibilities of address. Given that the address used was

one held by the Pastoral Board for the Station that was a reasonable course of action.

POINT THIRTY FIVE

Noted.

POINTS THIRTY SIX AND FORTY TWO

I do not accept these submissions. In my view the sending of the application copies to Mr. and Mrs. Boladeras did not comply with Section 118. The object of the advertising and posting requirements is to provide reasonable methods whereby applications can come to the notice of affected parties. Otherwise personal service would have been provided for.

POINTS FORTY THREE TO FORTY FIVE INCLUSIVE

I do not accept these submissions for the reasons set out above.

POINTS FORTY SIX TO FORTY NINE INCLUSIVE

Noted.

POINTS FIFTY TO FIFTY TWO INCLUSIVE

I will deal with these questions later in my report.

R.W. CREASY - SCHEDULE SIX

POINT SIX

I accept this submission.

M.C. CREASY - SCHEDULE NINE

POINT THIRTY EIGHT

I accept this submission.

POINT THIRTY NINE (a)

I do not accept this submission.

M.G. CREASY - SCHEDULE TEN

POINTS FIVE TO SEVEN INCLUSIVE

Noted.

HOT HOLDINGS PTY LTD - SCHEDULE ELEVEN - page (5)

POINTS III (e) (i) and (ii)

I accept these submissions in general terms and will refer to the situation in more detail in the conclusion to the report.

POINTS III (e) (iii) and (iv)

I accept these submissions.

TROMEN PTY LTD - SCHEDULE EIGHTEEN

POINTS SIXTEEN AND SEVENTEEN

I note these submissions and say that while I do not embrace the reasoning I accept the proposition that Sections 58(4) - not 74(3) - and 118 have been complied with.

MINERICHIE INVESTMENTS PTY LTD - SCHEDULE TWENTY SEVEN

POINTS SIXTEEN AND SEVENTEEN

I refer to my comments on the Troman Pty Ltd submissions which are identical submissions.

REPLIES

ARIMCO MINING PTY LTD AND ORESEARCH NL - SCHEDULE THIRTY SIX

POINTS NINE TO FOURTEEN

I do not accept these submissions. Section 118 does not demand personal service of the application copy and provides some flexibility in the addresses to which it can be sent. It is a question of fact whether it has been complied with and in my view the service desposed to was in compliance with the Section. In my view it is very relevant that Arimco were aware of the application because the object of Section 118 is to that notice be given to affected pastoralists.

POINTS FIFTEEN TO TWENTY FOUR INCLUSIVE

I do not accept these submissions. It does not, in my view, follow, that if I find there is non compliance with Section 118 that I must necessarily recommend refusal of the application. The evidence was not necessarily that the application copy was sent to one holder only but rather to both holders at one address.

This in my view constitutes compliance. Compliance is a question of fact and clearly some methods would be better than others.

POINTS TWENTY FIVE TO THIRTY ONE INCLUSIVE

Noted with the comment that I am satisfied that Hot Holdings Pty Ltd complied with Section 118.

POINT THIRTY TWO

This question will be dealt with in the conclusion to my report.

APPLICATION E36/277

APPLICANTS SUBMISSIONS - ARIMCO MINING PTY LTD AND ORESEARCH NL -
SCHEDULE THIRTY FIVE

POINTS FORTY SIX TO FORTY NINE INCLUSIVE

OBJECTORS SUBMISSION

M.G. CREASY

I did not receive any submissions in support of the objection.

HOT HOLDINGS PTY LTD - SCHEDULE ELEVEN

POINTS VIII (a) TO (c)

Noted.

REPLIES

ARIMCO MINING PTY LTD AND ORESEARCH NL - SCHEDULE THIRTY SIX

POINTS ONE TO EIGHT INCLUSIVE

Noted. The questions will be dealt with in the conclusion to the report.

HOT HOLDINGS PTY LTD - SCHEDULE TWELVE

POINTS VIII (a) TO (d) INCLUSIVE

Noted.

CONCLUSION

Set out following are my recommendations;

1. I firstly recommend that Exploration Licence application E36/211 be granted over whatever land (if any) that was open for mining when it was applied for on 29th September 1992.

2. I secondly recommend that Exploration Licence application E36/214 be granted over whatever land (if any) that was open for mining when it was applied for on the 9th October 1992 and which has not been applied for within Exploration Licence application E36/211.

I make these recommendations on the basis that although most of the land the target of the two applications was not available when applied for, there may be, upon closer examination of the relevant boundaries some land available to the applicants.

3. I recommend that Mining Lease application M36/250 be refused on the basis that the marking out requirements of the Mining Act and Regulations were not strictly complied with.

In particular, (a) the land was not marked out at 8.30-12 am on the 15th October 1992 as claimed.

(b) a Form 20 in the name of Maurice McDougall Urquhart was placed on the datum peg at the time of marking out.

(c) a Form 21 was subsequently lodged in the name of Lanner Pty Ltd.

4. I recommend each of the following applications for approval, namely;

M36/249

E36/215

E36/216

E36/217

E36/218

E36/219

E36/220

E36/221

and E36/222

I conclude that the five applicants associated with the applications complied with the initial requirement at the same time and accordingly that it is appropriate to conduct a ballot to determine priority.

As set out in my findings of fact I have accepted the evidence that the applications were filed at times ranging between 3 and 51 seconds past 8.30 am on the 15th October 1992.

Despite being satisfied that M36/249 was marked out 11 seconds before the first exploration licence application was lodged I am nevertheless satisfied that compliance with the initial requirement set out in Section 105A happened "at the same time" within the meaning of Section 105A (3).

The legislature has clearly given priority to applicants who first comply with the initial requirement and such compliance must be given its full effect.

Equally however, the legislature has contemplated that compliance may occur at the same time and therefore a ballot is necessary to determine priority.

Within the Section the legislature has grouped in tenements which have different initial requirements and specified what those initial requirements are.

Within the initial requirements of marking out the legislature has separately provided for 2 types of marking out - one by placing of pegs and scraping of trenches at the corners of tenements, the other by description where the boundaries have been previously surveyed.

The legislature has clearly contemplated, and the cases interpreting the legislation have supported the concept that priority is to be given to the fastest application that strictly complies with the initial requirement.

Therefore if a party has first complied they are entitled to priority.

However, as reflected in the provisions for determining priority by ballot, the legislature has also contemplated situations where despite an applicants best efforts they have only matched the efforts of others.

Such is the case in respect of the applications referred to within this recommendation.

The evidence heard in respect of the various applications supports the conclusion that while it is possible to mark out a mining lease by description within 3 seconds, it is not possible to lodge an exploration licence application within that period. By specifying the initial requirements of the various tenements the legislature has in my view recognised this.

It follows, in my view, that if an applicant has complied with a different initial requirement but with equivalent expedition they must not be disadvantaged by the impossibility of being able to be as quick.

Accordingly in my view M36/249 should be included in a ballot to determine priority.

In concluding that all five applicants for exploration licences must enter a ballot to decide priority I go no further than looking at what the legislature contemplated.

Section 105A provides that exploration licences have to be lodged and that it can happen at the same time.

The legislature further provides a system whereby applicants can attend at the Registry offices to physically lodge their application.

No further "system" is provided for.

In the instant case the land was released prior to the office doors being opened.

This resulted in the predictable and permissible scenarios of interested parties gathering at the doors of the Registry office with a view to rushing in as soon as they were opened.

The Act or Regulations do not provide a time within which parties who lodge an application are deemed to have lodged the application "at the same time".

Neither does the Act or Regulations provide for how many doors through which applicants may enter the office nor how many staff may be permitted to face the applicants who choose to partake in this activity.

The Act and Regulations do not give advantage to those who have attended regularly at the Registry on previous days nor to those who have followed the history of the ground closely. The only requirement is to lodge the application.

The Act also does not require that you must personally know of the ground being released before you lodge an application.

It is possible, and it occurred in this matter, that applications are lodged in hope that the ground is open.

Accordingly the legislature has contemplated an arrangement whereby an applicant can lodge his application "blind" and ahead of an application of another checking to ensure, through the only method available, (that of looking closely at a map) that the ground has been released.

The legislature has provided that to resolve any deadlocks nothing more sophisticated than a ballot, should determine priority. Given this scenario I conclude that each of the applicants in this matter complied with the initial requirements as set out in Section 105A at the same time.

Mark Creasy was effectively the first person into the Registry office exploiting his own system designed for the situation by sending Mason in via the other door to the office to check on the map to ensure the ground was open.

He lodged his application as soon as he knew the ground was open. Epis, as agent for Hot Holdings lodged "blind" - a permissible practice, by simply charging into the office and straight up to the counter.

Neale Johnson did not intend to lodge blind but then reacted to hearing the words of Mason who had nothing to do with him by, in trust, lodging two applications.

Each of these people were attend to by three separate staff members.

In deciding whether the applications were lodged at the same time I come back to the point set out earlier that if a party has complied with the initial requirement with equivalent expedition they must not be disadvantaged by the impossibility of being able to be as quick as another.

In arriving at the decision that I have I realise that it sits uncomfortably with the decision of a fellow Warden give in the case of Ashton Gold (WA) Ltd -v- Western Mining Corporation Ltd.

In that matter the Warden decided that an application lodged, initially 6 seconds but by finding 28 seconds, after the first application was not lodged at the same time as the competing application.

Within the reasons for decision the Warden said the decision was consistent with earlier decisions.

In referring to a case of Dalrymple Resources NL -v- Forrest, the Warden said:

"In that case the Warden found on the facts that the applications were not lodged at the same time as it was clear that one application had been lodged prior to the receipt of the second or competing application".

In that case however the Warden hearing the matter said:

"Given that the only issues between the parties was which lodged its application first, it was decided, on the basis of convenience to consolidate the hearing of both applications and the objection".

The Warden then went on to decide that one application was lodged before the other.

The issue of whether the applications were lodged "at the same time" does not appear to have been specifically raised or addressed. In referring to the case of Emlen Pty Ltd -v- Atkins and Saladar, the Warden said:

"In that case the Warden found that although an endorsement on competing applications was for the same time there was in fact a differentiation in the time of lodgement between the competing applications and that the earlier application had priority pursuant to the provisions of Section 105A".

In fact in that matter the Warden said the following:

"Having heard the evidence in this matter I make the following findings of fact;

firstly that at 8.31 am on 15 June 1989 Oates lodged the application of Colin Ross Atkins with the Registrar....secondly, due to the conflict in the evidence between Oates and Cox as to the lodging of the applications for Saladar and Emlen, I cannot make a finding as to whether they were lodged

by Oates or by James and Pickering. It is not disputed however, that they were lodged. However, I cannot say whether those two applications were lodged at the same time or after the Atkins application; nor can I say whether Saladar was lodged before Emlen or vice versa. I believe the evidence does, however, allow me to find - and I do so find - that the applications were lodged before the applications lodged by Eric Moses.....Thirdly ...I accept the evidence of Oates that the four applications lodged by Mr. Moses were lodged at 8.34 am and this is not inconsistent with the evidence of Mr. Moses. I can find no statutory basis for saying that because he was outside the office at 8.30, his application would therefore be deemed to be filed at the same time as the other applications....The conclusion I therefore draw is that I am unable to decide which of applications 51/240 to 51/242 have priority in relation to each other and I therefore order that a ballot take place to determine the priority of those three applications. A further conclusion I draw is that the applications numbered 240 to 242 inclusive were lodged in time before applications 243 to 246 inclusive and take priority over those four applications. In relation to applications numbered 243 to 246 inclusive I am, however, not in a position to decide what priority they take in relation to each other. I therefore order a ballot in relation to those four applications to determine their priority....".

I have some difficulty with this decision because Section 105A says "where in respect of any land the warden is satisfied that 2 or more applicants complied with the initial requirement in relation to their applications at the same time, priority shall...be determined by ballot conducted by the warden in open court".

The Section in my view requires a finding on behalf of the Warden before a ballot can be conducted, it does not provide that a ballot can determine the facts.

When seen from this perspective the decision does not as strongly support the proposition for which it is cited.

Returning to the Ashton decision the Warden went to say:

"Although very close or fine differences in time between competing applications may render any distinction between them impossible and therefore produce the degree of satisfaction required under the legislation this is not the situation in this case. It is quite clear and is in fact agreed between the parties that there was a distinction of at least 28 seconds between the lodgement of the competing applications".

It is my view that, with respect, the learned Warden has put an undue emphasis on the question of whether it is possible to factually differentiate between the times of the lodging of applications.

In my view this does not enable the expression "at the same time" to be considered as other than meaning the exact same second the competing application was filed. It suggests that if you can't decide a ballot must be held. In my view the legislation given the initial requirements it specifies does not have to be interpreted in that way. The Warden says that she accepted the submission that the legislation as presently framed may operate arbitrarily in some cases.

With respect it seems to be that, although I accept the legislation is inherently unsatisfactory, if one takes a very narrow view of the legislation then it is more likely that arbitrary results are produced.

If the expression at the same time is allowed to operate within the context of the legislation then although arbitrary results are not excluded they may be less frequent.

It is for these reasons that I have come to the conclusion that even though I am able to make findings which do place applications before others that nevertheless I conclude in the factual circumstances of this case that compliance with the initial requirement took place at the same time.

For the sake of completeness I turn now to the question of the significance of the lack of dating on the application lodged by Chad Johnson.

The dating of these applications led to them to have two times placed on them, the second set of times being some two minutes after the lodging of the other applications.

In the case of Forresteria Gold NL -v- Dalrymple Resources NL the presiding Warden said:

"The lodging of an application does not include the vetting or processing of the application. Once an application is lodged it can then be vetted or processed".

In the case of Ashton Gold (WA) Ltd and Western Mining Corporation one of the application was submitted unsigned and undated.

The presiding Warden took the time of the submission of the signed and dated application as being the time of compliance with the initial requirement.

In coming to that decision the Warden said:

"In line with the decision of Warden I.G. Brown in Biddle -v- Bywood Holdings I do not consider that the submission of an unsigned or incomplete application amounts to complying with the initial requirement for the purpose of Section 105A".

In fact in the case Warden Brown said:

"The issue for determination is whether the failure of the applicants to deliver to the Registrar a statement specifying the matters described in paragraph 58(1)(b) of the Mining Act....has the effect of making the applicant second in priority to the objector/applicant because of the provisions of Section 105A of the Act".

In coming to the conclusion that the application was not lodged until the statement was received at the Registry the Warden said:

"One could argue that the opening words used in Section 58(1)(v) ie. "shall be accompanied by" can be interpreted to mean that the "work programme" is a distinct and separate item to the application for an exploration licence. It would then be suggested that the provisions of Section 105A could be read

so as to give priority to an applicant who "first complies with the initial requirement". I do not accept that proposition....For my part Section 105A must be read together with the appropriate Sections and regulations applicable to tenements. In the case of an exploration licence it is my view that whatever constitutes an application pursuant to Section 58 must exist before Section 105A operates".

With respect that decision must now be seen to have been incorrect because of the decision by the Supreme Court in Aberfoyle Resources. In that case his Honour Mr Justice Rowland said:

"I deal first with the allegations.....that the warden erred in finding that Jones and Connell had a valid application, notwithstanding the application was not accompanied by a statement which the requirements of Section 58.....In my view, this is primarily a question of fact, but apart from that, it does not affect the validity of the application. The relevant statement in accordance with Section 58 is simply a statement that is to accompany the application".

With respect therefore it is not in my view well settled that an undated application is not valid.

In my view when one looks at the prescribed form - Form 21 - Application for mining tenement - it is clearly intended that the Department complete the time and date of receipt and it is obviously the practice to affix a dated stamp to the application. For my part I am unable to accept that an incorrectly dated application is valid and one that is undated is invalid. Therefore if an application is to be rejected for being undated then I see no reason why an application which is incorrectly dated should not also be rejected.

In fact I am of the view that the dating does not affect validity and that it would therefore be wrong to record the time the applications were dated as being the time they were lodged rather than the time they were initially lodged with the staff.

I turn now to the question of service on the pastoralist. I conclude that non compliance with the provisions of Sections 58(4) and 118 does not affect the validity of the applications. However, in my view on the facts each of the parties has complied with the Sections.

In each case the applicants have sent copies of the application to the stations, or the holders of the pastoral leases concerned. The Act contemplates that notice be given to owners, occupiers and holders of pastoral leases so that they might be advised of an applicants intentions in respect of their land.

The Act does not provide that there must be personal service of the applications. It also provides for some flexibility in the addresses to be used.

I am satisfied that considering the means used by each of the parties that the sort of notice contemplated by the Sections was given.

Even on the evidence there was no question on the facts that each of the affected parties were well aware of the situation. Mr. and Mrs. Boladeras were made well aware of the interest in the land on Yandal and Barwidgee Stations and so were Arimco Mining Pty Ltd and Oresearch NL who objected to many of the applications. From a practical point of view it is obvious that the object of the legislation has been achieved and in my view it would be artificial and wrong to find otherwise.

I turn now to the question of who should participate in the ballot.

In my view the five applicants Robert Wilmot Creasy, Hot Holdings Pty Ltd, Mark Gareth Creasy, Minerichie Investments Pty Ltd and Tromen Pty Ltd should take part in a ballot being allocated one entry only.

I found this a very difficult issue to determine but I have decided that the use of the expression "by ballot conducted by the Warden in open court" allows the Warden to determine the method of ballot.

If one approaches it from that point of view then one must consider whether it is appropriate to allow one party to have an unfair advantage in the ballot.

I have concluded that to allow all of Mark Creasy's applications to be part of the ballot would give him an unfair advantage.

Clearly in the case of the exploration licences they are all over essentially the same ground.

It follows that the granting of one will necessarily result in there being no ground available for the others.

If I include all of Creasy's applications in the ballot then he will have 4 out of 8 chances of being the successful applicant while each of the other parties will have only 1 chance in 8 of being successful.

If however, I exclude all but one of Creasy's applications then each party has a 1 in 5 chance of being successful.

I realise that if the mining lease application has priority there is still land available to the exploration licence applicants.

If that scenario occurs and all of Creasy's applications are included then his chances of winning second priority get even greater.

If the additional applications are excluded then each applicant has the same chance.

It is my view that the legislature decided that if applicants applied for the same ground at the same time then luck was to determine priority.

A "loaded dice" is not consistent with that.


There is also the argument that the expression "applicant" is used in Section 105A to differentiate it from the expression "application".

Although superficially attractive it is obvious that the expressions are both used extensively throughout the Act and Regulations and it is in my view hard to conclude there was a deliberate differentiation in the Section.

I further recommend that E36/220, E36/221 and E36/222, all exploration licence applications by Mark Gareth Creasy be accorded priority in that order after the ballot has determined the priority of the other mentioned tenements.

Having recommended a number of competing applications for approval and provided that a ballot be held to determine priority I recommend Application

E36/217 for refusal on the ground that there would be no ground available once the competing application that has priority is granted.



.....

P.G. MALONE SM

WARDEN