In the Matter of Application for
Exploration Licence 36/161
and Objection No. 80/923

Between:

GREAT CENTRAL MINES NL
MARK GARETH CREASY

HOLDER

and

HOT HOLDINGS PTY LTD

OBJECTOR

REASONS FOR DECISION

Warden V.J. French S.M.
On 15 September 1992 a survey of the southern boundary of Exploration Licence (E) 36/161 was conducted by Associated Surveys International Pty Ltd at the request of the current tenement holders Great Central Mines NL and Mark Creasy.

The objector, Hot Holdings Pty, Ltd lodged an objection on 12 March 1993 on the grounds that the southern boundary is not in the position as shown in the survey diagram OP2233. Another objection by Trumen Pty Ltd was lodged on 9 March 1993 but was subsequently withdrawn. The objector is the applicant for ground previously the subject of E 36/78 immediately to the south of E 36/161.

History of the Tenements

E 36/161 was applied for by Mark Creasy in November 1990 and subsequently approved for grant on 25 November 1991. The ground covered by E 36/161 was previously comprised in E 36/79 surrendered in October 1990 and subsequently released on 7 November 1990. However the application for E 36/161 was for ground that extended beyond the previous southern boundary of E 36/79 and extended into ground covered by E 36/78. This area of ground was excised by endorsement on the grant of the licence.

E 36/78 was subsequently surrendered in 1992 and that ground is now the subject of competing applications including that of the objector Hot Holdings Pty Ltd.

The Survey

The surveyors commissioned by the holders of E 36/161 contacted the Department of Minerals and Energy and requested instructions with respect to the survey of the southern boundary.

The description of ground applied for in E 36/161 uses Mt Grey Well as its starting point and then proceeds in a rectangular shape extending into the ground comprising E 36/78. The description itself states that the ground applied for excises all existing tenements encroached upon. Because the southern boundary of E 36/161 was therefore contiguous with the northern boundary of E 36/78 the Department advised that the survey of the southern boundary of E 36/161 should be established by surveying the northern boundary of E 36/78. As the starting point for E 36/78 was Mandaline Well and that was not a surveyed point, the Department determined that the survey should be effected in accordance with a status plan dated 7 November 1991 using the northern corner of Mining Lease (M) 36/200 and proceeding east. Mr L Annison, the Director of Mapping and Surveys, gave evidence that this course of action was advised as it seemed the most expedient course at the time and he believed that that would bring about the.../2.
same result as using Mandaline Well as a starting point. He stated that it was "plotted to tie in with Mandaline Well". Because of the subsequent objection the Department ordered a survey of Mandaline Well. Mr Annison now concedes that the southern boundary or the northern boundary of E 36/78 could be surveyed using Mandaline Well as a starting point. However he maintains that the course of action adopted at the time was appropriate in the circumstances as at that stage Mandaline Well had not been surveyed and the status plan indicated that the northern boundary of M 36/200 was in line with the starting point established by reference to Mandaline Well. He commented that the status plan had been in existence since November 1991 and available to the public.

Mr Charles Parker gave evidence that on instructions from the Department he surveyed Mandaline Well on 7 May 1993. Although he did not survey the southern boundary of E 36/161 he stated that as Mandaline Well is now surveyed, if that was used as a reference for the starting point then the southern boundary of E 36/161 should be the orange line as depicted in exhibit 6 rather than the line surveyed by Mr Monk and depicted as yellow on that plan. Although the difference is barely noticeable an enlargement on that plan indicates that the difference is approximately 37.43 metres.

Mr Monk, the surveyor who completed the survey in September 1992, confirmed that having surveyed the southern boundary of E 36/161 in accordance with the Mines Department instructions, ie. measuring from the north east corner of M 36/200 in an easterly direction, the boundary was as depicted by the yellow line in the working plan. He stated that when he conducted the survey he did not survey Mandaline Well but went past it as is indicated at page 8 of his field notes (exhibit 7).

Validity of Survey

I consider that the survey of the southern boundary of E 36/161 carried out in September 1992 and depicted on the survey plan using as a starting point the northern boundary of M 36/200 is not correct. While it is appropriate to survey the southern boundary of E 36/161 by reference of the northern boundary of E 36/78 it is now clear that using the north east corner of M 36/200 as the starting point of that survey will not give an accurate survey of the relevant boundaries. Now that Mandaline Well has been surveyed it is appropriate that that be used as a starting point. I am satisfied that using Mandaline Well as a starting point will give a surveyed line that is different from the boundaries surveyed in September 1992 and depicted as a yellow line on the working plan. Consequently I consider it appropriate that a new survey be conducted and will recommend accordingly to the Minister.
Nature of Survey

It has been submitted by the objector that having established that Mandarine Well is the appropriate starting point, the survey should be conducted by measuring out in a westerly direction from Mandarine Well in accordance with the last leg of the description in the application for E 36/78 depicted in the working plan (exhibit 6) as an orange line. In accordance with the working plan this would raise the northern boundary of E 36/78 approximately 37.4 metres thus raising the southern boundary of E 36/161 to that extent. However the holders of tenement E 36/161 maintain that substituting the orange line on the working plan is not appropriate. Gregory Clarke, an engineering surveyor, gave evidence that plotting out E 36/78 by reference to the now surveyed position of Mandarine Well will give a completely different result. He tendered a sketch map showing calculations that indicate that the fourth and closing leg of the description of E 36/78 does not in fact meet at the starting point and results in the northern boundary of E 36/78 being approximately 50 metres south of the surveyed boundary. The objectors have objected to the admission of the sketch map arguing that it was inadmissible as the map had in fact not been prepared by Mr Clarke and was not to scale. Alternatively they argued that little weight should be given to the sketch map. While I agree that the map itself is not admissible as evidence of the correct position of E 36/78 the evidence of Mr Clarke that the calculation of the description brings about a different result from that disclosed in the working plan is admissible evidence. In any event I am quite satisfied that it is not appropriate to survey the southern boundary of E 36/161 by reference to a northern boundary of E 36/78 calculated by reference to the starting point only and not by reference to the whole description of E 36/78.

I have had the benefit of reading the decision of Mr Commissioner Heenan in Consolidated Gold Mining Areas NL - v - O'research NL and I respectfully endorse Mr Heenan’s comments with respect to the need for certainty in determining the boundaries of mining tenements. Although in many cases a boundary dispute can be resolved by survey only of the relevant boundary of a mining tenement or tenements, in this case I consider that it is appropriate that the whole of the tenement be surveyed in order to establish its correct position. If, as is obvious from the dispute between the parties, an area of some 39 metres in width is significant then it is necessary to determine with some degree of accuracy the actual boundaries established by the true geographical position of the description in the application.

.../4.
Therefore I recommend that the southern boundary of E 36/161 be resurveyed using Mandaline Well as the starting point but that the survey be measured in accordance with the description in the application for E 36/78, i.e., that the measurements from Mandaline Well be calculated in the order and direction indicated in the written description of the ground applied for and subsequently granted. If this entails a complete survey of all boundaries of E 36/78 then that is what is required to ascertain the correct position of E 36/78 and consequently the southern boundary of E 36/161.

Costs

An application for an order for costs has been made by the objector. The objector has submitted that the recommendation made by me that a new survey be conducted was the order sought by the objector and that therefore in the usual course an order for costs should be made in its favour. It was submitted that the provisions of Section 134(2) do not preclude an order being made for costs. Section 134(2) only precludes an order being made against an objector or an applicant. Although Hot Holdings Pty Ltd may properly be characterised as an 'objector' for the purpose of Section 134(2), the tenement holder is not an 'applicant'. Therefore I consider that I have a discretion on the question of costs. However although the recommendation I have made accords with the recommendation sought by the objector it does go further than that and adopts to some extent the submissions made by the holder.

Taking into account the nature of the proceedings and the effect of my recommendation I do not consider it appropriate that an order for costs should be made against either party.

V J FRENCH SM
WARDEN
10 SEP 1993

MU/LR1579FI