



21 September 2007

Australian Stock Exchange Limited  
Exchange Plaza  
2 The Esplanade  
PERTH WA 6000

### **Ministerial submissions relating to the Shovelanna tenement**

Following numerous requests from shareholders the Company has decided to publish the three submissions it lodged with former Minister Bowler in respect to the Section 111A application on E46/678.

The Company has previously advised Rio Tinto Ltd and the State Government of our intention to publish these submissions as we believe that transparency is vital in all matters involving the Mining Act. Furthermore, we have requested that the other parties publish their submissions also.

As yet they have not availed themselves of the opportunity.

The Company's submissions may be accessed through its website at;  
[www.cazalyresources.com.au](http://www.cazalyresources.com.au)

Yours faithfully,

A handwritten signature in black ink, consisting of a stylized 'N' followed by a horizontal line.

**Nathan McMahon**  
**Joint Managing Director**

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**Clive Jones**  
**Joint Managing Director**

**FIRST SUBMISSION TO MINISTER FOR STATE DEVELOPMENT  
IN OPPOSITION TO SUBMISSION  
BY RIO TINTO LIMITED, HANCOCK PROSPECTING PTY LTD  
AND WRIGHT PROSPECTING PTY LTD  
FOR DISMISSAL OF APPLICATION E46/678  
PURSUANT TO SECTION 111A OF THE MINING ACT**

**IMPORTANT NOTICE REGARDING LEGAL PROFESSIONAL PRIVILEGE**

**With respect to the opinions of Mr Martin QC referred to in these submissions, legal professional privilege in respect of those opinions is waived only in relation to the opinions themselves, and not in relation to any other document, including correspondence between Mr Martin QC and his instructing solicitors.**

## Cazaly Iron Pty Ltd

### Submission to the Minister for Industry and Resources in opposition to the Application by Rio Tinto Limited for dismissal of Application EL 46/678 pursuant to Section 111A of the Mining Act

#### Executive Summary

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1. All of the matters raised by the Rio JV in support of the Section 111A Application are irrelevant because they all relate to the actual or proposed conduct of the Rio JV in some way.
2. None of the matters raised by the Rio JV in support of the Section 111A Application:
  - (a) relate to Cazaly at all; or
  - (b) are relevant to the decision the Minister is required to make under Section 111A.
3. For the reasons set out in the opinion of Wayne Martin QC (*enclosed at Tab "B"*) the matters raised by the Rio JV do not give rise to any ground or basis upon which the Minister could lawfully exercise the powers conferred upon him by Section 111A.
4. The Rio JV has not advanced any reason why it would not be in the public interest that:
  - (a) the land the subject of EL46/678 should not be disturbed; or
  - (b) Cazaly's application for EL46/678 should not be granted.
5. The Rio JV has not presented any case:
  - (a) that the Minister can take into account for the purpose of making a decision under Section 111A; or
  - (b) that Cazaly can respond to or is required to respond to.

#### Background

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6. On Friday 26 August 2005, Exploration Licence 46/209 held by a joint venture between Hamersley Resources Limited, Hancock Prospecting Pty Ltd and Wright Prospecting Pty Ltd (referred to as the **Rio JV**) expired pursuant to the provisions of the *Mining Act 1978 (WA)* (**the Act**). Hamersley Resources Limited had a 50% interest in the tenement and the other two joint venturers held 25% each. It is apparent from correspondence sent to the Department that Hamersley Resources Limited is the manager of the Rio JV.
7. No application to renew E46/209 was received prior to its expiry and accordingly, pursuant to the terms of the Mining Act, Rio's rights over the land formerly the subject of E46/209 came to an end. The land was therefore open for mining within the meaning of the Act. Pursuant to the Act any person was entitled to make an application for a mining tenement over that area.
8. On Monday 29 August 2005, Cazaly Iron Pty Ltd (formerly known as Cyril Resources Pty Ltd) (**Cazaly**) applied for EL46/678 over the area formerly occupied by E46/209 together with some additional land. Cazaly is a wholly owned subsidiary of Cazaly Resources Limited, a company listed on the Australian Stock Exchange. An application for an extension of term of

E46/209 was lodged by the Rio JV with the relevant mining registrar on Wednesday 31 August 2005 (ie, 5 days after the term had expired).

9. On 5 September 2005 Rio lodged applications for mining leases 46/437-440 over substantially the same area that was previously occupied by E46/209.
10. By letter dated 21 September 2005, the Rio JV requested that the Minister for State Development (**the Minister**) exercise his discretion under Section 111A of the Act to refuse Cazaly's application for EL46/678 on the grounds it would not be in the public interest to grant E46/678 to Cazaly (**the Section 111A Application**).
11. By letter dated 6 October 2005 the director of the Mineral and Title Services Division of the Department of Industry and Resources invited Cazaly to lodge a written submission in support of Cazaly's application for E46/678. A copy of the letter from DoIR is *enclosed at Tab "A"*.
12. The DOIR letter stated that the Rio JV raised the following points in support of the Section 111A Application:
  - Acting in good faith, the Rhodes Ridge Joint Venture (**RRJV**) did all that it reasonably could to ensure that its application for renewal of term of Exploration Licence 46/209 was lodged in time;
  - It is probable that, had it been received on time, the application for renewal of term would have been granted for reasons including the significant exploration previously undertaken by RRJV on Exploration Licence 46/209 and on the tenure previously held on this ground;
  - The impending proclamation of the Mining Amendment Act 2004 will provide for renewal of term applications to be lodged at any office of the Department of Industry and Resources (ie not only at the relevant Mining Registrars office) – this amendment confirms Rio's view that the current decentralised lodgement system is administratively difficult and it would not be in the public interest for RRJV to be penalised for it;
  - It would also be in the public interest for the Shovelanna Resource to be retained by the RRJV as this would maximise the prospect of it being developed in a rational and orderly manner;
  - As a gesture of goodwill, Rio would be prepared to reimburse Cazaly Pty Ltd for reasonable costs incurred right up to date in connection with its application for Exploration Licences 46/678.

### **Nature of Section 111A**

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13. Section 111A of the Act provides that:

*"The Minister may:*

- (c) *by notice served on the mining registrar or the warden ... terminate an application for a mining tenement before the mining registrar or the warden has determined, or made a recommendation in respect of, the application; or*
- (d) *refuse an application for a mining tenement:*

*if in respect of the whole or any part of the land to which the application relates:*

(e) *the Minister is satisfied on reasonable grounds in the public interest that:*

(i) *the land should not be disturbed; or*

(ii) *the application should not be granted;*

or

(f) *the person who in relation to the land was formerly the lessee of a mining lease the term of which has expired, was a person deriving title through such a former lessee, has subsequently made a late renewal application and the Minister, being satisfied that the requirements of that expired mining lease and of this Act in relation to that lease had been substantially observed (other than as to the timing of an application for renewal) and that the person has continued to observe those requirements as if the term of the lease had not expired, determines that the renewal application should be approved and grants that renewal”.*

14. It is important to note that the question for determination in the present case under Section 111A is whether there is any public interest reason to refuse or dismiss Cazaly's application for E46/678. The focus of the enquiry under Section 111A:

(i) is a focus on the applicant and whether the application should not be granted on reasonable public interest grounds; and

(ii) does not involve consideration of the conduct, abilities or circumstances of any other person (such as the Rio JV).

15. The enquiry under Section 111A is not an enquiry as to whether there are any better competing applications or whether any other company or person should be entitled to a mining tenement over the ground. The enquiry is simply whether the Minister can be satisfied on reasonable grounds in the public interest that Cazaly's application should not be granted.

16. It should also be borne in mind that Cazaly's application is an application for an exploration licence, not a mining lease. If application E46/678 is granted, Cazaly will only have the right to explore the tenement. Issues relating to the mining, development and other exploitation of the tenement are therefore not relevant to the Minister's consideration in this case. The question is whether there is any reasonable public interest reason why Cazaly should not be allowed to explore the land the subject of E46/678, should its application be granted.

17. For the reasons set out in the opinion of Wayne Martin QC (*enclosed at Tab "B"*), when considering an application under Section 111A of the *Mining Act*, it is not lawful for the Minister to consider:

(a) whether any other person has a competing application for the area the subject of E46/678;

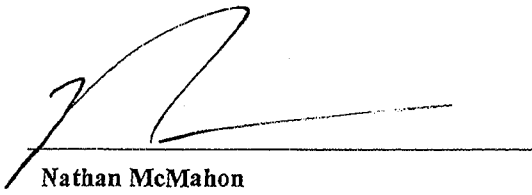
(b) whether the Rio JV's application of E46/209 would have been granted had it been received on time; or

- (c) whether any other person is more capable of developing the Shovelanna Hill resource than Cazaly.
18. Examples of public interest reasons that might justify the Minister exercising his discretion under Section 111A to terminate or refuse an application for a mining tenement include cases where the applicant had a serious criminal record and was thus not of good character or where the applicant was an enemy foreign national (for example, during a time of war).
  19. It should also be noted that the onus is on Rio to demonstrate that there are reasonable grounds to conclude that it is not in the public interest that Cazaly's application be granted.

### Cazaly has No Case to Answer

20. None of the matters raised in support of the Section 111A Application by the Rio JV are relevant to the consideration the Minister has been requested to undertake pursuant to Section 111A. All of the matters that Rio has raised relate to:
  - (a) its own failure to lodge its renewal for E46/209 on time; or
  - (b) an allegation that the retention of the Shovelanna Resource by Rio JV would maximise it's chance of development; or
  - (c) the Rio JV's promise to pay Cazaly its costs incurred in connection with its application for E46/678.
21. The matters raised in support of the Section 111A Application:
  - (a) do not relate to Cazaly at all; and
  - (b) do not disclose any reason at all why it would not be in the public interest to grant E46/678 to Cazaly; and
  - (c) are therefore entirely relevant to the decision the Minister is required to make pursuant to the Section 111A Application.
22. For the reasons set out in the opinion of Wayne Martin QC, because these matters are not relevant they do not fall within any jurisdiction conferred upon the Minister by Section 111A of the Act and it is therefore not lawful for the Minister to take them into account.
23. The Rio JV has not advanced any reason why it would not be in the public interest that:
  - (a) the land the subject of E46/678 should not be disturbed; or
  - (b) Cazaly's application for E46/678 should not be granted.
24. The Rio JV has not presented any case:
  - (a) that the Minister can take into account for the purpose of making a decision under Section 111A; or
  - (b) that Cazaly can respond to or is required to respond to.

25. These submissions have been prepared on the basis that the letter from DoIR to Cazaly of 6 October 2005 (*enclosed at Tab "A"*) accurately summarises all of the matters raised by the Rio JV in support of the Section 111A Application. If there are any other matters that the Minister intends or wishes to consider in relation to the Section 111A Application, then Cazaly assumes (pursuant to the rules of procedural fairness) that it will be given an opportunity to provide information in relation to those matters to the Minister for his consideration.
26. The opinion of Wayne Martin QC attached to this submission is provided on the basis that legal professional privilege in respect of the opinion is waived only in relation to the opinion itself and not in relation to any other document, including correspondence between Mr Martin and his instructing solicitors.



**Nathan McMahon**  
Joint Managing Director  
Cazaly Iron Pty Ltd



**Clive Jones**  
Joint Managing Director  
Cazaly Iron Pty Ltd

Dated: 7 November 2005



Department of  
**Industry and Resources**

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Mr Nathan McMahon  
Managing Director  
Cyril Resources Pty Ltd  
Level 1  
22 Oxford Close  
WEST LEEDERVILLE WA 6007

Dear Mr McMahon

**APPLICATION BY CYRIL RESOURCES PTY LTD FOR EXPLORATION LICENCE 46/678 – REQUEST BY RIO TINTO LIMITED FOR REFUSAL IN THE PUBLIC INTEREST**

Further to recent telephone discussions you have had with officers of this Department concerning the above, I would confirm that, in a letter dated 21 September 2005 addressed to the Minister for State Development (**the Minister**), Rio Tinto Limited (**Rio**) has requested that the Minister exercise his discretion under section 111A of *the Mining Act 1978* to refuse application for Exploration Licence 46/678 on the grounds of public interest.

In its letter Rio raises a number of points in support of its request, including those briefly summarised as follows:-

- acting in good faith, the Rhodes Ridge Joint Venture (**RRJV**) did all that it reasonably could to ensure that its application for renewal of term of Exploration Licence 46/209 was lodged in time;
- it is probable that, had it been received on time, the application for renewal of term would have been granted for reasons including the significant exploration previously undertaken by RRJV on Exploration Licence 46/209 and on the tenure previously held on this ground;
- the impending proclamation of the *Mining Amendment Act 2004* will provide for renewal of term applications to be lodged at any office of the Department of Industry and Resources (ie, not only at the relevant Mining Registrar's office) – this amendment confirms Rio's view that the current decentralised lodgement system is administratively difficult and it would not be in the public interest for RRJV to be penalised because of it;

- it would also be in the public interest for the Shovelanna Resource to be retained by RRJV as this would maximise the prospect of it being developed in a rational and orderly manner; and
- as a gesture of goodwill, Rio would be prepared to reimburse Cyril Resources Pty Ltd for reasonable costs incurred by it to date in connection with its application for Exploration Licence 46/678.

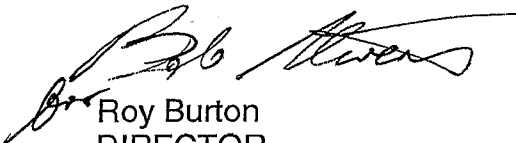
I now invite you to lodge a written submission in support of your company's application for Exploration Licence 46/678. Upon this Department's receipt of your submission and in accordance with our longstanding policy, it will be copied to Rio and Rio's letter/submission dated 21 September 2005 will be copied to you, accompanied by an invitation for each party to lodge any comments they may wish to make on the contents of the other party's submission (**NB**: any such comments must relate only to the contents of the opposing party's submission).

After we have received any such comments, they will also be copied to the opposing party on the strict proviso that no further comments/submissions from either party will be entertained.

Once all submissions and counter-submissions (ie, comments) have been received from you and Rio, they will be submitted (together with all other relevant evidence, information etc) to the Minister for his consideration and determination (or direction).

Your submission should be addressed to the Minister and be lodged within **21 days** from the date of this letter. For your convenience, it may be lodged at this Department's Head Office in Perth and marked to the attention of Mr Bob Stevens.

Yours sincerely



Roy Burton  
DIRECTOR  
MINERAL AND TITLE SERVICES DIVISION

6 October 2005

## OPINION

### Cyril Resources Pty Ltd – Exploration Licence 46/678

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1. I am asked to advise Cyril Resources Pty Ltd (“Cyril”) with respect to a number of issues which have arisen from a request by Rio Tinto Ltd (“Rio”) to the Minister for State Development (“the Minister”) to the effect that he exercise his powers under section 111A of the *Mining Act 1978* (“the Act”) to refuse Cyril’s application for Exploration Licence E46/678.

#### ***The Facts***

2. The facts relevant to the matters upon which my advice is sought may be shortly stated. On 29 August 2005 Cyril applied for Exploration Licence E46/678. At the time of that application, the land the subject of the application was Crown land open for mining, within the meaning of section 18 of the Act. That is because the land the subject of the application was Crown land not the subject of a mining tenement, Exploration Licence E46/209 having expired on 26 August 2005. At the time Cyril lodged its application on 29 August 2005, the land the subject of that application was not the subject of any other application for the grant of a mining tenement pursuant to the provisions of the Act.
3. Accordingly, pursuant to section 105A of the Act, assuming that Cyril has complied with all the requirements of the Act in relation to its application for Exploration Licence E46/678, it has the right in priority over any other applicant to have granted to it the mining tenement to which its application relates.

4. Cyril has been advised by the Department of Industry & Resources that by letter dated 21 September 2005 Rio requested that the Minister exercise the power conferred upon him by section 111A of the Act to refuse Cyril's application for Exploration Licence E46/678 on the grounds of public interest.
  
5. The letter from the Department identifies five propositions which have been advanced by Rio in its request to the Minister. Those propositions have been summarised by the Department in the following terms:
  - *“Acting in good faith, the Rhodes Ridge Joint Venture (“RRJV”) did all that it reasonably could to ensure that its application for renewal of term of Exploration Licence 46/209 was lodged in time;*
  - *it is probable that, had it been received on time, the application for renewal of term would have been granted for reasons including the significant exploration previously undertaken by RRJV on Exploration Licence 46/209 and on the tenure previously held on this ground;*
  - *the impending proclamation of the Mining Amendment Act 2004 will provide for renewal of term applications to be lodged at any office of the Department of Industry & Resources (i.e., not only at the relevant Mining Registrar's office) – this amendment confirms Rio's view that the current decentralised lodgment system is administratively difficult and it would not be in the public interest for RRJV to be penalised because of it;*
  - *it would also be in the public interest for the Shovelanna Resource to be retained by RRJV as this would maximise the prospect of it being developed in a rational and orderly manner; and*
  - *as a gesture of goodwill, Rio would be prepared to reimburse Cyril Resources Pty Ltd for reasonable costs incurred by it to date in connection with its application for Exploration Licence 46/678”.*
  
6. It can be seen from this summary of the propositions advanced by Rio in support of its request to the Minister, that the entire basis of its request is directed to its interests and its competing application, lodged subsequent to that of Cyril, for the grant of a tenement over the same ground albeit that

those interests are said to further the public interest. Put another way, Rio's request to the Minister that he exercise the powers conferred upon him by section 111A of the Act, is not said to be justified by reason of any matter fact or circumstance pertaining to Cyril or its application, but entirely by reference to the proposition that a subsequent application by the RRJV should be granted in preference to that of Cyril.

7. For the reasons which I will now address, on the assumption that the letter from the Department accurately summarises the submissions made by Rio to the Minister, in my opinion those submissions do not provide any ground or basis upon which the Minister could lawfully exercise the powers conferred upon him by section 111A of the Act.

### **Section 111A of the Act**

8. Section 111A of the Act relevantly provides:

*"111A(1) The Minister may:-*

*(a) by notice served on the Mining Registrar or the Warden, as the case requires, terminate an application for a mining tenement before the Mining Registrar or the Warden has determined, or made a recommendation in respect of, the application; or*

*(b) refuse an application for a mining tenement,*

*if in respect of the whole or any part of the land to which the application relates:-*

*(c) the Minister is satisfied on reasonable grounds in the public interest that:-*

*(i) the land should not be disturbed; or*

*(ii) the application should not be granted*

or

- (d) *a person who in relation to the land was formerly the lessee of the mining lease the term of which has expired, or is a person deriving title through such a former lessee, has subsequently made a late renewal application and the Minister, being satisfied that the requirements of that expired mining lease and of this Act in relation to that lease had been substantially observed (other than as to the timing of an application for renewal) and that the person has continued to observe those requirements as if the term of the lease had not expired, determines that the renewal application should be approved and grants that renewal”.*

9. The basic structure of sub-section (1) is immediately clear – the first sub-paragraphs ((a) and (b)) specify the powers conferred upon the Minister and the last two sub-paragraphs ((c) and (d)) specify the circumstances in which those powers may be exercised.
10. The sub-paragraphs of the sub-section which specify the circumstances in which the Minister may exercise his powers are expressed disjunctively, in the sense that they are linked by the expression “or”. Accordingly, as the section was enacted after the commencement of the *Interpretation Act 1984*, pursuant to section 17 of that Act, the sub-sections are to be construed disjunctively and not as implying similarity.
11. Put another way, pursuant to accepted principles of statutory construction reinforced by section 17 of the *Interpretation Act*, sub-paragraphs (c) and (d) of section 111A are to be construed as dealing with different and distinct matters.

12. That construction is reinforced by the subjects addressed in each of the sub-paragraphs. On the one hand, sub-paragraph (c) is concerned with matters pertaining to the application itself, whereas, on the other hand, sub-paragraph (d) deals with a subject outside the application – namely, a circumstance in which a late renewal application is made by the former lessee of a mining lease.
  
13. This approach to the construction of the two sub-paragraphs is further reinforced by the established principle of statutory construction to the effect that words in the statute are to be construed in such a way as to prevent any of those words being construed as otiose or redundant. Applying that principle to sub-paragraphs (c) and (d), if sub-paragraph (c) is to be construed as extending to matters external to the particular application for the tenement, and therefore as embracing matters of a kind specifically identified in sub-paragraph (d), sub-paragraph (d) would be otiose or redundant, contrary to the principle of statutory construction to which I have referred.
  
14. The distinction between sub-paragraphs (c) and (d) of sub-section (1) which I have identified is further reinforced by the observation that the powers conferred upon the Minister by sub-paragraph (c) are conditioned upon the Minister being satisfied on reasonable grounds in the public interest that one of the two circumstances specified in that sub-paragraph applies, whereas sub-paragraph (d) empowers the Minister to act to protect the private interest of the prior holder of a mining lease. Thus, while the latter sub-paragraph is directed to the recognition and protection of a private interest, the former sub-paragraph is directed to the public interest in either not disturbing the

land or refusing the particular application to which the sub-section is directed. Thus, the satisfaction of the Minister to the effect that the public interest will be served by refusing the application must be derived from reasonable grounds pertaining to the application itself, and not from matters, facts or circumstances extraneous to the application, such as the private interests of third parties.

15. Thus, it seems to me to be quite clear that sub-paragraph (c) is directed exclusively to matters pertaining to the application which might be the subject of the exercise of the powers conferred upon the Minister by the earlier sub-paragraphs of the sub-section, whereas sub-paragraph (d) addresses the specific circumstance of a late renewal application in respect of a mining lease, which circumstance would not otherwise fall within sub-paragraph (c).
16. Turning more specifically to the matters identified in sub-paragraph (c), it is plain from the summary of Rio's request to the Minister provided by the Department, that Rio does not assert that the Minister should exercise his power to refuse Cyril's application on the ground that the land should not be disturbed. On the contrary, Rio's request relies upon the prior disturbance of the land, and the proposition that the land should be further disturbed by the RRJV.
17. Accordingly, Rio's application must be to the effect that the Minister should be satisfied on reasonable ground in the public interest that Cyril's application should not be granted. However, none of the matters identified in the Department's summary of Rio's request to the Minister are directed to Cyril's application, but, on the contrary, all are directed to the proposition

that the Minister should prefer a subsequent application lodged on behalf of the RRJV. Because, for the reasons I have set out above, in my opinion sub-paragraph (c) confers jurisdiction upon the Minister to refuse an application if, satisfied on reasonable grounds in the public interest, that the application should not be granted by reason of facts, matters or circumstances pertaining to that application, it follows that none of the matters identified in the Departmental summary of Rio's letter to the Minister fall within the jurisdiction conferred upon the Minister by sub-paragraph (c).

18. Put another way, in my opinion it is clear from the structure of sub-section (1) itself, and from the principles of statutory construction and section 17 of the *Interpretation Act* to which I have referred above, that the jurisdiction conferred upon the Minister by sub-paragraph (c) of sub-section (1) is a jurisdiction to refuse an application for a mining tenement if the Minister is satisfied on reasonable grounds in the public interest that, for reasons pertaining to that application, it should not be granted. However, the departmental summary of Rio's request to the Minister does not identify any fact, matter or circumstance pertaining to Cyril's application, but rather, relies exclusively upon matters pertaining to a subsequent application by another party. Those matters do not enliven the jurisdiction conferred upon the Minister by sub-paragraph (c).
19. There is a further and additional reason why the matters summarised in the departmental letter as being the basis for Rio's request to the Minister do not, in my opinion, fall within any jurisdiction conferred upon the Minister by section 111A of the Act. In essence, those matters assert reliance upon a late renewal application for Exploration Licence 46/209. Sub-paragraph (d) of

sub-section (1) of section 111A expressly provides that a late renewal application for a mining lease may provide a ground upon which the Minister might lawfully exercise the powers conferred upon him by the sub-section. However, when enacting that sub-paragraph, the Parliament has expressly limited the basis upon which the Minister might act to the circumstance of a late renewal application for a mining lease, and has not included the circumstance of a late renewal application for any other form of mining tenement, including, in particular, a late renewal application for an Exploration Licence.

20. The well known principle of statutory construction usually identified by the Latin expression "*expressio unius, exclusio alterius*" (liberally translated – "the expression of one impliedly excludes others") leads inexorably to the conclusion that it was not the intention of the Parliament that a late renewal application for a Exploration Licence should be a ground upon which the Minister might refuse an application pursuant to the powers conferred upon him by section 111A of the Act.
21. Nor could it be realistically asserted that such a conclusion is perverse or could not have been the intention of the Parliament when enacting section 111A. A mining lease is the form of tenement created by the Act which give the tenement holder greatest security over the land the subject of the tenement and, when granted, will commonly induce the holder of the lease to expend substantial sums in improvements upon the land the subject of the tenement (such as the creation of a mine, the erection of a camp and the installation of a processing plant) in reliance upon an assumption of security of tenure. Thus, sub-paragraph (d) of sub-section (1) of section 111A

of the Act obviously reflects a legislative intention that the holder of a mining lease, who might have undertaken substantial works on the land the subject of the lease, should not be deprived of the benefit of that work because of an oversight in the lodgment of a renewal application.

22. However, in relation to other forms of tenement created by the Act, such as a prospecting licence or an exploration licence, the legislative intention to be derived from the provisions of the Act as a whole is much more specifically directed to the encouragement of prospecting and exploration, which are no doubt seen as furthering the public interest in the exploitation of mineral resources. So, the expenditure conditions imposed by the Act upon the grant of an exploration licence reflect the public interest in the tenement holder conducting exploration work for the purpose of identifying the mineral resource. If such exploration is not undertaken (and on my instructions no exploration work has been undertaken by the RRJV on EL46/209 for many years), the legislation reflects a parliamentary intention that the public interest is better served by making the land available to others who might more actively pursue exploration and development of the tenement.

### **Summary**

23. For the various reasons I have endeavoured to set out above, in my opinion the matters identified in the letter from the Department to which I have referred and which purport to summarise the basis of Rio's request to the Minister, do not give rise to any ground or basis upon which the Minister could lawfully exercise the powers conferred upon him by Section 111A of the Act. If the Minister were to purport to exercise those powers on the basis of

that request, in my opinion Cyril could obtain either declaratory or prerogative relief from the Supreme Court, declaring the purported exercise of the powers to be invalid (in the case of declaratory relief), or quashing the purported exercise of those powers (in the case of prerogative relief).

A handwritten signature in cursive script, reading "Wayne Martin", written in black ink. The signature is positioned above a solid horizontal line that extends across the width of the signature.

**WAYNE MARTIN QC**  
Francis Burt Chambers  
31 October 2005

**SECOND SUBMISSION TO MINISTER FOR STATE DEVELOPMENT  
IN OPPOSITION TO SUBMISSION  
BY RIO TINTO LIMITED, HANCOCK PROSPECTING PTY LTD  
AND WRIGHT PROSPECTING PTY LTD  
FOR DISMISSAL OF APPLICATION E46/678  
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**Cazaly Iron Pty Ltd**

**Submission to Minister for State Development  
In Opposition to Submission  
by Rio Tinto Limited, Hancock Prospecting Pty Ltd  
and Wright Prospecting Pty Ltd  
for Dismissal of Application E46/678  
Pursuant to Section 111A of the Mining Act**

**Executive Summary**

**Nature of Section 111A**

1. Under section 111A(1), the Minister does not have power to dismiss or refuse an application for a mining tenement in circumstances where that mining tenement has been applied for over ground previously occupied by an exploration licence that expired by virtue of a failure by the former holder to lodge a renewal of term within the timeframe prescribed by the Mining Act and Regulations.
2. Parliament has decided to grant the Minister the power to refuse or terminate an application for a mining tenement in those circumstances only where the preceding tenement was a mining lease. This is because the loss of a mining lease caused by the failure to lodge an application for an extension of term within the appropriate time would be likely to cause the loss of an operating mine and possibly also a processing facility, with a possible consequential loss of employment and other detrimental impacts. Such considerations do not apply to the loss of an exploration licence.
3. It follows that the Minister does not have power to grant the Section 111A application lodged by the joint venture comprising of Rio Tinto Limited, Hancock Prospecting Pty Ltd and Wright Prospecting Pty Ltd (**the Rio JV**) because the tenement that expired was an exploration licence.
4. If the Minister does not accept that submission and decides that he has power to grant the application lodged by the Rio JV in the present circumstances, then the following principles apply to the operation of section 111A:
  - (a) the inquiry under section 111A is not an inquiry as to whether there are any better competing applications or whether any other company or person should be entitled to a mining tenement of the ground;
  - (b) the inquiry is simply as to whether the Minister can be satisfied on reasonable grounds in the public interest that Cazaly's application should not be granted;
  - (c) the focus is therefore on Cazaly, not some other company or person; and
  - (d) submissions setting out excuses why the previous tenement was lost, whether it relate to the activities or proposed activities of some other person are entirely irrelevant.
5. The overwhelming majority of the Rio JV submission dated 21 September 2005 (**the Rio JV Submission**) is therefore irrelevant since it consists of material relating to the past conduct of Rio Tinto Ltd, allegations relating to how the tenement came to expire, and Rio Tinto Ltd's alleged plans in relation to the tenement in the future. The Rio JV's only relevant submission is an allegation that Cazaly has no track record in iron ore and limited capacity to pursue exploration and development of the Shovelanna Resource. This is dealt with below.

6. The Rio JV bears the onus of showing that there are reasonable public interest reasons why Cazaly's application should be dismissed. In Cazaly's submission instances of cases where it will be in the public interest to reject an application that is validly made will be rare and the power should only be exercised in exceptional circumstances. This is particularly so in light of the public interest in ensuring certainty in the system of grant and administration of mining tenements and in the uniform and equal application of the rules and time frames set out in the Mining Act to everyone.

**Cazaly has the Ability to Explore, Mine and Develop E46/678**

7. Cazaly has the ability to explore, mine and develop any iron ore deposit on E46/678:
- (a) To date it has entered into an MOU with BHP Billiton Iron Ore Pty Ltd (**BHP Billiton**) whereby:
- (i) Cazaly, and its joint venture partner, Echelon Resources Pty Ltd (**Echelon**) will deliver to BHP approximately 5 million wet tonnes per annum of primary crushed ore, subject to Cazaly/Echelon delineating a JORC compliant proven and probable reserve of at least 100 million tonnes and such reserve being compatible with agreed specifications. BHP may also take ore if a reserve of less than 100 million tonnes is delivered;
  - (ii) first production is planned within two to three years of receipt of all necessary consents and approvals for commencement of exploration on E46/678;
  - (iii) BHP Billiton may purchase any additional ore in excess of 100 million tonnes. Cazaly/Echelon may sell any ore not purchased by BHP Billiton to third parties;
  - (iv) BHP Billiton will pay Cazaly/Echelon a pre-determined price based on the benchmark price for Mt Newman lump and fines (**FOB**);
  - (v) Cazaly and Echelon have calculated that their margin based on current prices will be in the range of \$70 million to \$85 million per annum. These calculations are based on the production of 5 million tonnes per annum and standard industry contract mining and primary crushing costs; and
  - (vi) BHP Billiton and Cazaly will work together in good faith to assess whether Orebody 18 North and Shovelanna (the resource located on E46/678) should be developed as a single unified mining operation.
- (b) Cazaly has entered into a joint venture with Echelon conditional upon grant and Ministerial consent whereby Echelon will earn a 14% interest in E46/678 in return for:
- (i) Echelon committing \$2.5 million to fund exploration drilling on E46/678; and
  - (ii) Echelon providing technical advice on the exploration, mining and development of E46/678.
- (c) Echelon brings a high level of technical iron ore expertise to the development of E46/678 through its managing director, Mr Matthew Rimes. Mr Rimes is a mining engineer with extensive experience in the iron ore sector, having been employed (prior to becoming managing director of Echelon) for the last ten years by Robe River Mining and holding senior positions at Robe River Mining's operations at Pannawonica and West Angelas. Mr Rimes' last position at Robe River Mining was Executive Manager – Resource Development where he was responsible for Robe

River Mining's exploration activities and strategic mine planning. He was also on the Board of Robe River Mining Company Pty Ltd.

- (d) Cazaly has also entered into a binding letter of intent with Investec Bank (Australia) Limited, whereby Investec has agreed, subject to the grant of E46/678, and certain other conditions, to assist in providing or arranging finance for the development of the project on normal commercial terms. Investec is one of the largest specialist banking groups in the world and currently has total assets under management exceeding A\$45 billion. It has extensive experience in funding the development of new mining projects.
8. The grant to Cazaly of E46/678 would:
- (a) introduce a new third iron ore producer in the Pilbara region;
  - (b) expedite the flow of royalties to the State consequent upon the mining of the Shovelanna resource. This is assisted by the fact that BHP Billiton has agreed, subject to the conditions set out below, to purchase the ore, and there is therefore a ready customer for the ore. The parties have also agreed to work together to commence mining within two to three years of the satisfaction of the conditions required for the commencement of exploration on E46/678. Cazaly estimates that royalties in excess of \$100 million will be paid to the State within the first 10 years of grant of E46/678; and
  - (c) allow the ore mined by Cazaly and sold to BHP Billiton to be exported using BHP Billiton's rail and port network, thus in effect opening up that network to third party access.
9. For Cazaly, the development of E46/678 would be a "company maker". Cazaly has an extremely strong commercial incentive to explore and mine any deposit located on the tenement as soon as possible.
10. Cazaly is willing to agree to the imposition of special conditions on the grant of E46/678 to it in order to assist in guaranteeing the fastest possible development of the project, including:
- (a) an obligation to spend a minimum of \$500,000 on actual exploration (including drilling, sampling, assaying and geophysical analysis) in the first year of grant of E46/678. This is approximately 25 times the normal minimum expenditure commitment on the tenement;
  - (b) Cazaly will commit to share its own common user facilities with third parties on reasonable commercial terms.
11. It should also be borne in mind that the underlying tenement that expired was merely an exploration licence, not a mining lease. The tenement did not have an existing mine or any mine-related infrastructure located on it. In Cazaly's submission, it would be extremely unusual to restore an expired exploration licence to a previous holder that has allowed it to expire.

#### **Policy of the Mining Act**

12. The object and policy of the Mining Act is to encourage the exploration and mining of mineral resources for the benefit of the State of Western Australia and its people. The provisions of the Act, including time frames applicable to applications for extension of term, apply equally to all. The policy of the Act is to ensure that landholders explore or develop the land the

subject of the licences or leases granted to them. Tenement holders are given a finite period in which to do this. Upon the expiry of that period, the tenement will expire and it is then open for others to seek an opportunity to explore or develop the land. Land prospective for minerals should not "warehoused" and nor should assistance be given to people or entities that have frustrated the object of the Act by warehousing tenements for long periods of time.

**Response to Incorrect or Misleading Statements in the Rio JV Submission**

13. Contrary to the impression given in the Rio JV Submission, it has not been active in exploration on E46/209 (the expired tenement) and previous tenure over the last 20 years, and has had no plans to develop the tenement in that time:
- (a) Rio has never conducted any drilling of any kind on E46/209 during the entire history of the tenement. The last drill hole on E46/209 and its predecessor tenure was drilled 20 years ago. During the 16 years that the tenement existed, the Rio JV failed to meet the minimum expenditure requirements in respect of the tenement in 11 out of 16 years. Total expenditure on E46/209 over the four years from 2002 to 2005 amounted to only \$20,284.00 compared with a minimum commitment of \$273,332.00. Additionally, there was no geotechnical, metallurgical, hydrological or other work commensurate with an intent to develop the project towards a mining operation during the life of E46/209;
  - (b) the Rio JV was prepared to trade E46/209 for a tenement from BHP Billiton if a suitable trade could be organised. The Rio JV made this statement in its application for an extension of term for the 2005/2006 year and the statement was made in August 2005. It is clear that as late as August 2005, the Rio JV had no intention of developing the Shovelanna resource;
  - (c) at a recent exploration seminar held on 30 September 2005, Tom Albanese (Rio's Chief Executive for Copper and Exploration) outlined Rio's plans for the development of iron ore deposits in the Pilbara. Many discoveries and targets were outlined, including targets at Robe River, Brockman, Tom Price, Marandoo, Yandicoogina, Hope Downs, East Angelas, West Angelas, Channar, Eastern Ranges and Paraburdoo. The Shovelanna deposit on E46/209 was not mentioned anywhere;
  - (d) Rio Tinto Limited, through its subsidiaries and joint ventures, has an interest in over 130 tenements and 10,000 square kilometres of ground in the Pilbara region (including Hope Downs). The Shovelanna Hill deposit represents approximately 1.02% of Rio Tinto's Pilbara iron ore inventory. Rio Tinto Ltd has not paid any proper attention to the Shovelanna Reserve in the last 20 years because it has focussed on the other vast resources across the Pilbara available to it for development;
  - (e) over the last 20 years, the Rio JV has repeatedly stated in its annual exploration reports filed with the Department of Industry and Resources and in its applications for exemption from expenditure conditions that it had no intent to develop the Shovelanna deposit in the short to medium term. It repeatedly stated its intention to convert the exploration licence into a retention licence (which it never did). One of the reasons offered for not developing the deposit was that it contained a relatively high amount of phosphorous. However, the Shovelanna resource on E46/209 is an extension of the resource located on the tenement immediately adjacent to E46/209 owned by BHP Billiton known as Orebody 18 North. BHP Billiton is currently in the process of mining Orebody 18 North. The characteristics of the two orebodies are highly unlikely to differ much across the tenement boundary. Geology has no regard for artificial tenement boundaries. This raises the question as to why the Rio JV chose not to mine the Shovelanna resource;

- (f) neither Rio Tinto Limited nor the Rio JV have an operating mine within at least 120km or more of E46/678 and do not have any infrastructure close to E46/678. This provides another reason why the Rio JV did not develop the resource and had no intention of doing so;
- (g) the Rio JV has previously allowed the tenement to lapse. The predecessor tenement to E46/209 was E46/08, which was also owned by the Rio JV. This tenement expired on 11 February 1989 due to the Rio JV failing to lodge an application for renewal of the tenement before it expired due (in the words of the Rio JV) to "postal difficulties". In that case, the Rio JV waited for 90 days (in accordance with the provisions of the Mining Act) and then applied for a fresh exploration licence over that area. This demonstrates that the ground the subject of E46/209 was never a priority for the Rio JV and was unimportant to it;
- (h) contrary to the assertion in the Rio JV Submission, the extension of E46/209 that the Rio JV was seeking would not have been granted even if it had been lodged on time. The Rio JV would have needed to demonstrate "exceptional circumstances" to justify the further extension of time. Those circumstances did not exist. To the contrary, the Rio JV stated in its application for extension of term that the tenement could well be traded with a comparable BHP Billiton resource in the future. The Rio JV had repeatedly stated that it had no intention of developing the resource and no intention of conducting any further exploration work. The Department could not have lawfully granted the extension of term application; and
- (i) the Rhodes Ridge State Agreement has absolutely no application to the area occupied by E46/209 or E46/678. The letter from the former Premier relied upon by the Rio JV to demonstrate some sort of connection contains no enduring obligation or commitment on the part of the State. Further, that letter related to Temporary Reserve 5003H. That temporary reserve has long since ceased to exist, since it was converted to E46/8. E46/8 also expired due to the failure of the Rio JV to lodge a further extension of term application on time. The Rio JV then applied for and was granted E46/209, which has also expired. There is no connection with the Rhodes Ridge State Agreement at all.

#### **Uniform Application of the Mining Act**

- 14. In Cazaly's submission, to grant the Rio JV section 111A application in these circumstances would severely undermine confidence in the security of tenure that can be expected under the Mining Act and undermine confidence that the Act will be applied uniformly to everyone. It would also send a counter productive message that large multi-national companies can tie up large tracts of land for long periods of time with very little expenditure and expect to be afforded preferential treatment in order to preserve their tenure.
- 15. Conversely, rejection of the section 111A submission will send a clear message that the Mining Act applies to everyone equally. Everyone must comply with the timeframes set out in the Mining Act, including for the renewal of tenements. An application that is validly made over land that is open for mining ought to be granted unless there is some public interest reason that justifies refusal. Examples of such circumstances might include situations where the applicant was of bad character, or was an enemy alien, or where the underlying ground was of exceptional historical or environmental importance. There are no reasons or circumstances of that nature in this case, and the application pursuant to Section 111A ought to be rejected.

## Cazaly Iron Pty Ltd

### Submission to Minister for State Development In Opposition to Submission by Rio Tinto Limited for Dismissal of Application E46/678 Pursuant to Section 111A of the Mining Act

#### Introduction and Background

1. On Friday 26 August 2005, Exploration Licence 46/209 held by a joint venture between Hamersley Resources Limited, Hancock Prospecting Pty Ltd and Wright Prospecting Pty Ltd (referred to as the **Rio JV**) expired pursuant to the provisions of the *Mining Act 1978 (WA)* (**the Act**). Hamersley Resources Limited had a 50% interest in the tenement and the other two joint venturers held 25% each. It is apparent from correspondence sent to the Department that Hamersley Resources Limited is the manager of the Rio JV.
2. No application to renew E46/209 was received prior to its expiry and accordingly, pursuant to the terms of the Act, Rio's rights over the land formerly the subject of E46/209 came to an end. The land was therefore open for mining within the meaning of the Act. Pursuant to the Act any person was entitled to make an application for a mining tenement over that area.
3. On Monday 29 August 2005, Cazaly Iron Pty Ltd (**Cazaly**) applied for EL46/678 over the area formerly occupied by E46/209 together with some additional land (**the Application**). Cazaly is a wholly owned subsidiary of Cazaly Resources Limited, a company listed on the Australian Stock Exchange. An application for an extension of term of E46/209 was lodged by the Rio JV with the relevant mining registrar on Wednesday 31 August 2005 (ie, 5 days after the term had expired).
4. On 5 September 2005 Rio lodged applications for mining leases 46/437-440 over substantially the same area that was previously occupied by E46/209.
5. By letter dated 21 September 2005, the Rio JV requested that the Minister for State Development (**the Minister**) exercise his discretion under section 111A of the Act to refuse Cazaly's application for EL46/678 on the grounds it would not be in the public interest to grant E46/678 to Cazaly.
6. In accordance with the procedure established by the Department of Industry and Resources, Cazaly lodged an initial submission on 7 November 2005. On 11 November 2005 it was supplied with a copy of the Rio Tinto submission of 21 September 2005 and invited to respond to that submission.

#### The Operation of Section 111A

7. As set out in Cazaly's first submission, it is clear from Section 111A(1)(d) that Parliament has expressly decided not to include the circumstance of a late renewal application as a grounds for terminating an application for a mining tenement other than where the late renewal relates to a mining lease. Wayne Martin QC's opinion attached to Cazaly's first submission makes this clear. As Mr Martin points out in paragraphs 19 and 20, it is clear on a proper construction of the section that Parliament did not intend that a late renewal application for an exploration licence should be a ground on which the Minister might refuse an application pursuant to the powers conferred upon him by Section 111A of the Act.
8. If this construction of the Act is accepted then the Rio JV's application pursuant to Section 111A cannot succeed. The submissions set out below are made in the event that the

Minister decides that he does have power pursuant to Section 111A to terminate or refuse an application for an exploration licence that has been made over an area previously occupied by an exploration licence which the holder failed to renew.

9. If (contrary to the submission put above) the Minister decides that he does have power to consider the section 111A application the question for determination is whether there is any public interest reason to refuse or dismiss Cazaly's application for E46/678. This issue is addressed below.
10. The enquiry under section 111A is not an enquiry as to whether there are only better competing applications or whether any other company or person should be entitled to a mining tenement over the ground. The enquiry is simply as to whether the Minister can be satisfied on reasonable grounds in the public interest that Cazaly's application should not be granted. The burden of demonstrating that the grant of E46/678 to Cazaly would be contrary to the public interest is on the Rio JV.
11. It is therefore not appropriate to consider:
  - (a) whether any other company or person has a better capacity to develop the ground;
  - (b) whether or not the Rio JV's applications for mining leases shall be granted; or
  - (c) any other application for a mining tenement over that area made by any other person.
12. For these reasons set out in Cazaly's submission of 7 November 2005, all of the matters raised in the Rio JV submission (**Rio JV Submission**) of 21 September 2005 are irrelevant to the Minister's determination under section 111A save in relation to the matters raised in paragraph 42. Those matters are addressed below.
13. However, although the bulk of the Rio JV submission is irrelevant, the submission does contain a number of statements that are false, misleading or contradicted by other material previously relied upon by the Rio JV in other circumstances (for example in support of applications for exemption from expenditure conditions). Those matters are addressed in this submission where appropriate.
14. Annexed hereto at **Tab A** is a supplementary opinion of Wayne Martin QC. Mr Martin has reviewed the matters set out in the Rio JV Submission and advised in relation to any legal issues arising from that submission. Mr Martin QC's opinion is provided on the basis that legal professional privilege in respect of the opinion only in relation to the opinion itself and not in relation to any other document, including correspondence between Mr Martin QC and his instructing solicitors.

### **Cazaly has a Valid Application for E46/678**

15. The Application complies with all the technical requirements of the Act. The Application:
  - (a) is in the prescribed form;
  - (b) is accompanied by statements specifying:
    - (i) the proposed method of exploration on the ground the subject of the application;
    - (ii) the details of the program of work proposed to be carried out in the area;

- (iii) the estimated amount of money proposed to be expended on the exploration;
  - (iv) the technical and financial Resources available to Cazaly.
- (c) was accompanied by the amount of prescribed rent for the first year of the term of the license;
  - (d) was lodged at the office of the appropriate mining registrar (Marble Bar); and
  - (e) was accompanied by the prescribed application fee.
16. It is important to emphasise that the land the subject of the Application was open for mining at the time that the Application was made and that any person could have made an application for any form of mining tenement over that area at the time that Cazaly made its Application.
  17. Because Rio's application to renew the tenement was 5 days late, the tenement had expired. This expiry occurred by way of operation of the Act.
  18. It is very common for companies to apply for mining tenements over land where the previous mining tenement had recently expired. Such a practice is and always has been in accordance with the scheme established by the Act. Between 1 July 2005 and 30 September 2005 at least seven tenements expired in circumstances where fresh applications for new tenements were made by other parties consequent upon the expiry. The tenements that expired included E80/1512, E47/938, E04/832, E08/1077, E80/2037, E04/819 and P58/1115.

#### **Cazaly is first in time with its Application and has a Right of Priority for Grant**

19. Section 105A(1) of the Act provides that:
 

*"Subject to section 111A, where more than one application is received for a mining tenement (other than a miscellaneous license) in respect of the same land or any part thereof, the applicant who first complies with the initial requirement in relation to his application has, subject to this Act, the right and priority over every other applicant to have granted to him in respect to that land or part the mining tenement to which his application relates".* (emphasis added).
20. Section 105A(1) makes it clear that the party that is first in time with its application has "the right and priority over every other applicant to have granted to him" the mining tenement to which his application relates. This is and has always been a fundamental cornerstone of the Act and mining policy and procedure in Western Australia for a long period of time.
21. Cazaly was first in time with its application and therefore has a right of priority to grant of its application, subject to any reason why it would not be in the public interest not to grant Cazaly's application.

### **Cazaly has the Ability to Explore, Develop and Mine the Resource**

#### **Existence of Resource**

22. The Rio JV has made a number of estimates of the resource of iron ore contained on E46/678 (**Shovelanna Resource**):
  - (a) Up until 1996 it estimated that the Shovelanna Resource amounted to an inferred resource of 241 million tonnes of iron ore (at 62% Fe). Annexed at **Tab B** is a copy of the 1996 Annual Exploration Report demonstrating this.

- (b) In reports from 1997 onwards the Rio JV reported an indicated resource of 132 million tonnes. Annexed at **Tab C** is a copy of the 2004 Annual Exploration Report filed by the Rio JV.
23. Cazaly itself has estimated that E46/678 contains an inferred resource of at least 216 million tonnes at 62% iron.

#### Exploration Funding and Expertise

24. Cazaly has entered into a farm-in and joint venture agreement (**Echelon Agreement**) with Echelon Resources Limited (**Echelon**) whereby:
- (a) Echelon will commit \$2,500,000 to fund exploration drilling on E46/678 if it is granted to Cazaly;
  - (b) Echelon will provide technical advice on exploration and development of the resource;
  - (c) Echelon will earn a 14% legal and beneficial interest in E46/678 in return for funding \$2,500,000 in exploration drilling;
  - (d) On completion of the drilling program the parties have agreed to use their best endeavours to complete a study for the development of a mine on the area occupied by E46/678.
25. The completion and implementation of mine development will be managed by Echelon.
26. The Managing Director of Echelon is Mr Matthew Rimes. Mr Rimes is a mining engineer with extensive experience in the iron ore sector. Mr Rimes has primarily worked for major mining companies including the Rio Tinto Group and North Limited. Over the last 10 years he was employed by Robe River Mining and held senior positions at Robe River Mining's operations at Pannawonica and West Angelas. Prior to joining Echelon as Managing Director in June 2005, Mr Rimes held the position of Executive Manager, Resource Development for Robe River Mining. Mr Rimes brings extensive experience and expertise in the planning and execution of iron ore exploration and the mining of iron ore.
27. The arrangements in relation to the joint venture set out above are subject to Ministerial approval being received for those arrangements and all other necessary approvals and consents being obtained.
28. The Echelon Agreement is confidential and therefore can not be disclosed or annexed to this submission. However, a copy of Cazaly Resources ASX Release summarising the Echelon Agreement is **attached at Tab D**

#### Agreement with BHP Billiton

29. Subject to E46/678 being granted and to the necessary approvals being obtained (including Ministerial Approval), Cazaly and Echelon have entered into a Memorandum of Understanding (**MOU**) with BHP Billiton Iron Ore Pty Ltd (**BHP Billiton**) in relation to the long term sale of iron ore from E46/678.
30. The terms of MOU provides that in the event that Cazaly/Echelon are granted E46/678:
- (a) Cazaly/Echelon will deliver to BHP Billiton approximately 5 million wet tonnes per annum of primary crushed iron ore, subject to Cazaly/Echelon delineating a JORC compliant proven and probable reserve of at least 100 million tonnes and such reserve

being compatible with agreed specifications. There is also provision for BHP Billiton to purchase ore if the reserve is less than 100 million tonnes;

- (b) first production is planned within two to three years of receipt of all necessary consents and approvals for commencement of exploration on E46/678;
  - (c) within six months of determining the size and quality of the reserve, BHP Billiton must elect whether to purchase any additional ore in excess of 100 million tonnes on terms and conditions to be agreed. Cazaly/Echelon may sell additional ore not purchased by BHP Billiton to third parties;
  - (d) BHP Billiton will pay Cazaly/Echelon a pre-determined price based on the benchmark price for Mt Newmont lump and fines (FOB);
  - (e) Cazaly and Echelon have calculated that their margin based on current prices will be in the range of \$70 million to \$85 million per annum. These calculations are based on the production of 5 million tonnes per annum and standard industry contract mining and primary crushing costs;
  - (f) under the MOU the parties are to negotiate a detailed binding formal agreement within the next four months or such other period as agreed. Cazaly and Echelon have agreed to negotiate exclusively with BHP Billiton during this period;
  - (g) Cazaly and Echelon will be responsible for the exploration, mining and primary crushing of ore from E46/678 together with delivery of the ore to an agreed delivery point on or near the boundary between E46/678 and BHP Billiton's adjoining Orebody 18 North;
31. BHP Billiton and Cazaly will work together in good faith to assess whether Orebody 18 North and Shovelanna should be developed as a single unified mining operation. Another important feature of the MOU is that it opens the way for the possible exploitation of E46/678 and BHP Billiton's Orebody 18 North as a single unified mining operation. This would enable both BHP Billiton and Cazaly to take advantage of considerable synergies. In particular, both would be able to mine the areas that would otherwise be unavailable for mining due to the necessity to create significant batters around the mining operations. It is envisaged that up to 45 million tonnes of additional ore from the combined orebody could be released for mining through a unified mining operation. This in turn would allow more iron ore to be exported and facilitate the payment of greater royalties to the State and greater employment in Western Australia. Cazaly estimates additional royalties payable to the State would exceed \$150 million.
32. The MOU is non-binding (save the certain specified provisions) and conditional upon E46/678 being unencumbered and being granted on terms and conditions acceptable to BHP Billiton and any challenge to the grant being dismissed or discontinued. It is also subject to BHP Billiton completing satisfactory legal and technical due diligence and receipt of any necessary State and Federal consents as well as the consent of the Mt Newman Joint Venture Participants and the execution of definitive documentation.

#### **Easter Royalty Payments to the State**

33. On current prices the royalty payments to the State (calculated at the nominal 5M tonnes per annum) will exceed \$100 million within the first 10 years of the grant of E46/678. These payments are anticipated to commence within 2 to 3 years of obtaining approval to commence drilling programmes. This is a much quicker return for the State than if the Rio JV were to be granted a tenement over the ground. This is because Cazaly will not need to develop its own

rail and port infrastructure – it will sell ore to BHP which has already developed that infrastructure.

#### Access to Rail and Port Facilities

34. Assuming that the formal agreement with BHP Billiton is completed, the agreement resolves issues that Cazaly would otherwise have faced in relation to access to rail and port facilities. BHP Billiton will purchase the ore at the "mine gate" and it is anticipated the ore will be sent by rail to Mt Newman for blending with ore from BHP Billiton's other operations. The blended product will then be forwarded to Port Hedland for export, using BHP Billiton's rail and port facilities. In this way BHP Billiton's rail and port facilities are opened up to third party users such as Cazaly.

#### Introduction of a Third Iron Ore Producer in the Pilbara

35. Grant of Cazaly's application would introduce a third iron ore producer in the Pilbara. The introduction of a further iron ore producer in the Pilbara region is very strongly in the State's interests for the following reasons:
- (a) additional production will generate additional royalties for the State. Cazaly estimates that royalties in excess of \$100 million will be payable on ore sold from E46/678 within the first 10 years of grant of the tenement;
  - (b) additional production will generate further employment and commercial activity;
  - (c) the further employment and commercial activity generated will in turn generate revenue for the State.
36. It should be emphasised that Cazaly is free to sell any production above five million tonnes per annum that BHP Billiton does not wish to take to third parties. Such other third parties could include Fortescue Metals Group Limited and its subsidiaries that are developing the Christmas Creek and Cloud Break deposits north of E46/678.
37. There are significant competition benefits from active new participants entering the Pilbara iron ore industry. A direct comparison could be made with the Kambalda nickel mining industry which has become significantly more active, competitive and robust following WMC Resources Limited divesting its assets in the region to Mincor Resources NL, Independence Group NL and Reliance Mining Ltd, amongst others.
38. The MOU with BHP Billiton is confidential and therefore not able to annexed to this document. However, a copy of the release to the Australian Stock Exchange by Cazaly Resources Limited dated 28 November 2005 summarising the MOU is annexed at **Tab E**

#### Access to Capital

39. Cazaly has also entered into a binding letter of intent with Investec Bank (Australia) Limited (**Investec**). Pursuant to the agreement with Investec, Investec has agreed, subject to the grant of E46/678, the completion of a feasibility study to the satisfaction of Investec and the obtaining of the required approvals from Investec's credit committees, to assist in providing or arranging finance for the development of the project on normal commercial terms.
40. Investec is an independent, international specialist banking group listed on the London and Johannesburg stock exchanges. It provides a specialised range of banking products and services, including investment banking, treasury and specialised finance services. Investec has a market capitalisation in excess of A\$5 billion and total assets under management exceeding

A\$45 billion. It has considerable experience in assisting resources companies in sourcing finance for new mining projects in many countries including:

- Austral Coal's Tahmoor Coal Mining in New South Wales.
  - Rio Nanceau's Aqua Blanca Polymetallic project in Spain.
  - Layfayette Mining's Rapu Rapu gold/based metals project in the Philippines.
  - Constellation Copper's Lisbon Valley copper project in the USA.
  - Gallery Gold's Mupane gold project in Botswana.
41. The agreement with Investec is confidential and therefore can not be disclosed or annexed to this submission. However, a copy of Cazaly Resources ASX Release summarising the agreement with Investec is attached at **Tab F**.
42. The agreement with Investec provides Cazaly with access to funds necessary to develop a mine on E46/678, assuming that it is grant the tenement and the feasibility study warrants development of a mine on the tenement.
43. In addition, Echelon Resources has committed to spend at least \$2.5 million on an exploration programme on E46/678 in return for earning a 14% interest in the tenement (assuming that it is granted and subject to receipt of all necessary approvals). The balance of the planned \$6 million programme will be raised through capital raisings and/or loan funding. Cazaly has several tranches of Options to convert to fully paid shares that, if fully executed, will raise the Company \$13.97 million. As noted above, Investec has agreed to arrange funding for the development of E46/678.

#### Development Outline

44. Cazaly and Echelon have already prepared a detailed development outline for the exploitation of the Shovelanna Hill resource. This development outline looks at a variety of options for the exploration and mining of the tenement, including sale of ore at the mine gate. This was prepared prior to the execution of the MOU with BHP Billiton.
45. Pursuant to the development outline, Cazaly and Echelon will carry out approximately 40,000 metres of drilling to bring the resources on E46/678 up to measured and indicated resource standard under the JORC Code. The proposed exploration programme is designed to fast track the project to facilitate a feasibility study that will enable the earliest possible commitment to commence mining and production of ore.
46. Cazaly's drill programme of 40,000 metres should be contrasted with the Rio JV's performance over the last twenty years. The Rio JV has not conducted any drilling at all on the ground the subject of E46/678 since 1986.
47. A copy of the development outline is annexed at **Tab G**.

**Cazaly has commitment to develop, mine and export the iron ore resource at Shovelanna Hill**

48. In contrast to the Rio JV, Cazaly has an extremely strong incentive and commitment the Shovelanna Hill resource. For Cazaly, the development of the Shovelanna Hill resource will be a "company maker". Cazaly therefore has an extremely strong commercial incentive to explore and mine any deposit located on the tenement.
49. Cazaly's commitment to the development and mining of the Shovelanna Hill deposit is demonstrated by the fact that it has already entered into agreements with:
- (a) a joint venture partner with a higher degree of technical expertise in the exploration and mining of iron ore deposits;
  - (b) an offtake partner for the sale of iron ore from the Shovelanna Hill; and
  - (c) a financier to fund development of the project.

Cazaly has done more work toward the development of the Shovelanna Resource in the last 3 and a half months since applying for the ground than Rio has in 20 years.

50. Small companies are quite capable of developing significant mineral deposits. The following recent examples are worthy of consideration:

**(a) *The Sally Malay Nickel deposit in the Kimberley***

This deposit was formerly held by Normandy Mining Limited (now Newmont Australia Ltd.). Sally Malay Mining Ltd acquired the project in February 2001 and has now developed a highly successful nickel mining project with significant sales to China. According to Macquarie Equities, Sally Malay's operating cash flows are likely to reach around \$67 million per annum next year. This development has resulted in great benefits to the State including employment and royalties.

**(b) *Kimberley Diamonds Company NL***

Kimberly is an emerging diamond producer targeting production of more than 700,000 carats per annum. Its mining operations are based at its Ellendale Diamond Project in the Kimberley Region where production began in 2002. Production is rapidly expanding and cash flow is set to reach approximately \$80 million within two years.

This project area was previously held by Rio Tinto for many years, was not worked and following settlement of plaintiff action it is now one of the largest diamond producers in the Western world.

**(c) *Midwest Corporation Limited***

Midwest has recently signed an \$1.5 billion agreement with Sinosteel Corporation that will see the two parties share risk while scoping, pre-feasibility and feasibility studies are carried out on the Weld Range haematite and Koolanooka magnetite projects in Western Australia.

**(d) Murchison Metals Limited**

Murchison is developing the Jack Hills iron deposit (67Mt resource) situated in the Murchison region of WA. The Company proposes to truck the ore some 600 km to Geraldton for shipping to existing Chinese steel groups. POSCO Limited, one of the world's largest iron and steel producers, recently accepted a \$3 million placement in Murchison and entered an agreement whereby they will have the right to purchase 10 million tonnes of iron ore over the next 25 years. Stage 2 of the development will see an expanded mining operation plus a new rail line, port and iron ore handling facility at an estimated capital cost of \$1.1 to \$1.3 billion.

**(e) Aztec Resources Limited**

Aztec has recently announced the development of the Koolan Island iron ore project situated in Yampi Sound in the Kimberley region. The project was previously mined by BHP who closed operations in 1993. Aztec has recently finalised a bankable feasibility study and has begun pre-construction work for the mine which is expected to produce \$1.45 billion in total revenue over life of mine.

51. There is no valid argument that small companies can not bring resource projects into production. There are numerous examples whereby the commercial imperatives to a smaller company are instrumental in bringing previously undeveloped projects into production. In the Letter of Intent to provide and arrange financing for the project for Cazaly Investec state that:

*"Our recent past experience on pure project finance ... shows that companies with small balance sheets can and do obtain commercial terms for their required capital needs once a well-conducted FS has been completed and confirms positive project economics"*

**Special Conditions**

52. Cazaly's commitment to the development of the tenement is such that it is willing to agree to the imposition of special conditions on any exploration license granted to it in order to assist in guaranteeing the fastest possible development of the project. Cazaly would agree to the following special conditions being imposed on any grant of E46/678 to it:
- (a) Cazaly will spend a minimum of \$500,000 on actual exploration (including drilling, sampling, assaying and geophysical analysis) in the first year of grant of E46/678. This is approximately 25 times the minimum expenditure commitment of the tenement and double what the Rio JV claims to have spent on the project in the previous 16 years.
  - (b) Cazaly supports the development of common user facilities and will, on reasonable commercial terms, share its own facilities in the area.
  - (c) Cazaly will use its best endeavours to promote indigenous employment and involvement in the Project.

**Response to Paragraph 42**

53. As stated above, the only relevant portion of the Rio JV submission is contained in paragraph 42. The main thrust of that submission is that Cazaly has no track record in iron ore and "at this stage, limited capacity available to pursue exploration and development of the Shovelanna Resource". The material set out above demonstrates that the allegations contained in paragraph 42 have no basis.

54. Paragraph 42(b) refers to the tenement holdings of Cazaly Resources and Cazaly Iron. It is noted that Cazaly in its quarterly report dated 29 July 2005 filed with the Australian Stock Exchange stated that it had \$1.648 million in deposits at call and cash.
55. It should be noted that:
- (a) The tenement holdings referred to in paragraph 42(b)(i) include applications for tenements that have not yet been granted and on which there is no expenditure commitment; These applications are continually reviewed and it should be noted that Cazaly have relinquished many tenements during the past 6 months following exploration and review activities. Cazaly has not merely "land banked" vast tenement areas with the aim to "trade" them;
  - (b) the vast majority of the tenements held by Cazaly Resources and Cazaly Iron are the subject of active exploration programmes, either directly through Cazaly Resources or Cazaly Iron, or through joint venture agreements. For instance Cazaly has a joint venture agreement with Consolidated Minerals Ltd whereby they may earn 65% of the nickel rights on various tenements by spending \$1.4 million over 3 years. This is an example of Cazaly's activities resulting in the tenements being fully utilised. Where appropriate, Cazaly Iron and Cazaly Resources apply for exemptions from expenditure conditions or relinquish the tenement in question and concentrate on the most prospective regions;
  - (c) Cazaly has no difficulty in meeting its expenditure commitments;
  - (d) Echelon Resources, through its Managing Director (Mr Matthew Rimes), also brings significant iron ore experience to bear on the development E46/678. It cannot be said that the Cazaly/Echelon joint venture does not have sufficient experience to develop the tenement. This is particularly so in light of the MOU entered into with BHP Billiton. Additionally Cazaly has technical staff who have previously worked in the Pilbara iron ore industry including a senior geologist who worked on Orebody 18 with BHP Billiton.
  - (e) Assuming that a formal agreement with BHP Billiton is completed (which is highly likely), issues as to rail and port access are non-existent.

### **Response to Incorrect or Misleading Statements in the Rio JV Submission**

#### **Use it or Lose it – The Policy of the Mining Act**

56. The policy behind the Act is that land prospective for minerals should not be left idle and if the holder of that land does not work it or fails to exploit the land without good reason, that land will be forfeited and others will be given an opportunity to explore and develop it. The Act sets up a system of enforcement of this policy through the lodgement of private claims against land holders who do not actively explore or exploit their tenements. The policy behind the Act is to avoid the "warehousing" of tenements. The object and policy of the Act is secured through a combination of mechanisms including the following:
- (a) the grant of title with finite terms and subject to expenditure conditions which escalate over time;
  - (b) allocating title on a first come first served basis ensuring competition for tenure;

- (c) the right of anyone to plaint a holder of a tenement for non compliance with expenditure conditions and to secure a right in priority to apply for the tenement in the event that it is forfeited or surrendered.

57. During the second reading speech of the Mining Act on 25 October 1978, the then Minister for Mines commented on the policies and objectives of the Mining Act as follows:

*“What the Government wants to achieve is legislation which will discourage people from occupying land without trying to prospect or mine it, whichever is the case, and prevent them from merely occupying the land so that other people do not have access to it. Some people do this with the aim of acting as an intermediary between the Crown, to whom the minerals belong in fact, and the people who wish to mine the minerals. They want to be the middle man and say that the general users of minerals have to pay them for it.*

*The Government feels the minerals belong to the Crown and should be allocated by the Crown for the genuine well-being of the community generally, whether it involves individuals, or small or large companies.*

*The other main aim is to create certainty and confidence and so help to effect the most frequent turnover of land if it is not used. We want the people to use the land for the best economic flow-on for the community of Western Australia.*

*That is to be achieved under the Bill without taking away anyone's acquired right and without disadvantaging either the small people or the large companies.”*

58. The Auditor General's report dated June 2002 entitled “Level Pegging: Managing Mineral Titles in Western Australia” stated:

*“The mineral titles system provides a regulatory framework designed to enable exploration and mining by providing fair access to mineral resources, active development of these resources, and payment of mineral royalties to the State.”*

#### **Nature of an Exploration Licence**

59. It is also important to note that an exploration licence is granted for a relatively short initial period (currently five years) for the purpose of exploring for minerals. The expenditure commitment applicable to an exploration licence is much less than in relation to a mining lease. An extension of term of an exploration licence is possible, but can only be granted for good reason. The concept behind an exploration licence is to encourage holders to identify resources that can be the subject of mining. An exploration licence can then be upgraded to a mining lease. If no mineral deposits are discovered than the exploration licence should be surrendered or should expire on completion of its term.

#### **Lack of Development on E46/209**

60. The Rio JV claims to have conducted significant exploration, drilling and assessment on E46/209 and the tenure previously held in relation to that ground (see paragraph 9). This statement conceals the fact that there has been a distinct lack of development on E46/209 by the Rio JV over a very long period of time. It is important to note the following:
- (a) Rio never conducted any drilling of any kind on E46/209 during the entire history of the tenement. E46/209 was granted on 27 August 1989 and expired on 26 August 2005. In that 16 year period Rio did not conduct any drilling of any kind and very limited other work.

- (b) During the 16 years that the tenement existed Rio failed to meet the minimum expenditure requirements in respect to the tenement in 11 out of 16 years.
- (c) Total expenditure since grant of the tenement is \$244,412 against a minimum commitment of \$606,665.
61. Total expenditure on E46/209 over the 4 years from 2002 to 2005 amounted to only \$20,284 compared to the minimum expenditure commitment during that period of \$273,332.
62. Much of the small amount of the expenditure actually made in relation to the tenement related to administrative overheads, rent and rates. Copies of each of these Form 5 reports on operations on mining tenement in respect of E46/209 between 1989 and 2004 (ie. the life of the tenement) are enclosed at **Tab H**.
63. Aside from the total lack of drilling during the life of E46/209 there has been no geotechnical, metallurgical, hydrological or any other work commensurate with an intent to develop the project towards a mining operation.
64. The claimed aggregate expenditure of \$587,063 on E46/209 and previous tenure over the area is very little when it is borne in mind that this amount was expended over 36 years from 17 October 1969.
65. Rio has conducted no drilling during the past 16 years and it can not be said that the tenement has been **actively** developed. The lack of exploration shows that the Rio JV has merely been "warehousing" the tenement. This restricts the State's ability to benefit from the natural resources contained in the tenement. The Rio JV's previous poor tenement expenditure history and lack of active exploration was not in the "public interest."

~~Rio has no commitment to explore and develop the land the subject of E46/209~~

66. The Rio JV claims at various places in it's submission that the Shovelanna resource is regarded as important for the Rio JV. It also claims that it has plans for the development of the Shovelanna Resource (see paragraphs 24 to 32).
67. Such statements are completely at odds with the Rio JV's actual conduct and statements over a long period of time. Set out below are examples of such conduct and statements.

~~Rio JV was prepared to trade E46/209~~

68. The Rio JV's application for extension of term for the 2005/2006 year states that:

*"At 132 million tonnes at 62.3%Fe, the current resource is significant large and despite its high phosphorous, the value and strategic importance of this resource has increased dramatically due to recent change in market conditions and its proximity (<5 kms) to the new BHP Billiton Mine at Orebody 18).*

*At [an] appropriate time this tenement may well be traded with a comparable BHP Billiton resource in close proximity to the Hamersley Iron infrastructure in the future or the Pilbara Rail may be extended from Giles and Giles Midi eastward to support this deposit. Each of these scenarios is unlikely to happen in the short term. In the mean time the company will (sic) like to hold on to this large and valuable resource on which the company is already conducting considerable drilling and assessment. Additional close space drilling is not required at this stage and will only be conducted closer to development.*

*The resource area in the tenement will be converted to Retention Status once the applicable terms and conditions of such tenement status are resolved." (emphasis added)*

69. This statement was prepared and sent to the Department of Industry and Resources in late August 2005. It is clear that the Rio JV as late as late August 2005 had no intention of developing the Shovelanna Resource.
70. What is worse, the Rio JV was clearly contemplating trading E46/209 for some other tenement with BHP Billiton.
71. These statements are completely at odds with the self serving statements in the Rio JV submission about its plan to develop the tenement. The Rio JV was prepared to trade the tenement (despite acknowledging that there was a large and valuable resource on the tenement) because it was not strategically located to the advantage of the Rio JV. The concept of retaining tenements simply as trading stock totally contravenes the intentions of the Act. The object and policy of the Act 1978 is to encourage the exploration for and development of mineral resources to the benefit of the State and its people. The "land banking" of tenements until a suitable corporate deal becomes should not be condoned. Mineral tenements are a State resource which must be utilised for the best value to the State and not merely as a "trading stock" for individual corporate interests.
72. A copy of the Rio JV's application for extension of term is annexed "**Tab IJ**".

**The Rio JV has No Plans to Explore E46/209**

73. It is clear that Rio never had any commitment to explore or develop the land the subject of E46/209:
- (a) At a recent exploration seminar held on 30 September 2005, Tom Albanese, Rio's Chief Executive for Copper and Exploration, outlined Rio's plans for development of iron ore deposits in the Pilbara. A number of discoveries and current targets were outlined including the following:
- (i) Robe River;
  - (ii) Brockman;
  - (iii) Tom Price;
  - (iv) Marandoo;
  - (v) Yandicoogina;
  - (vi) Hope Downs;
  - (vii) East Angelas;
  - (viii) West Angelas;
  - (ix) Channar;
  - (x) Eastern Ranges;
  - (xi) Paraburdoo.

- (b) The Shovelanna deposit on E46/209 was not mentioned anywhere. A copy of Mr Albanese's presentation is annexed as **Tab K**.
74. Rio Tinto Ltd, through various subsidiaries (including Hamersley Iron Pty Ltd) holds huge areas of ground prospective for iron ore pursuant to at least six state agreements including:
- (a) Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972;
  - (b) Iron Ore (Mount Bruce) Agreement Act 1972;
  - (c) Iron Ore (Hamersley Range) Agreement Act 1963;
  - (d) Iron Ore (Robe River) Agreement Act 1964;
  - (e) Iron Ore (Channar Joint Venture) Agreement Act 1987;
  - (f) Iron Ore (Yandicoogina) Agreement Act 1996
75. However, in relation to 2 of these agreements there has been a conspicuous failure to explore and mine the ground the subject of the agreements.
- (a) Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972;
  - (b) The Iron Ore (Mount Bruce) Agreement Act 1972.
76. Pursuant to the six iron ore state agreements to which it is a party, Rio has a huge number of tenements available to it to develop and exploit. In all, Cazaly estimates that Rio Tinto Ltd through its subsidiaries and joint ventures has an interest in over 130 tenements and over 10,000 square kilometres of ground in the Pilbara region. This is based on searches of the DOIR tenement register.
77. The Shovelanna licence is less than 40 square kilometres in size representing approximately just 0.36% of Rio Tinto's holdings in the Pilbara. Rio Tinto's Pilbara iron ore resource/reserve inventory amounts to 12,908 million tonnes of iron ore (as reported in Rio Tinto Limited's 2004 Annual Report) of which the Shovelanna Resource is only 132 million tonnes, or 1.02%. We note that there are several other resources controlled by Rio that are not publicly reported so the resource at Shovelanna may in fact be significantly less than 1.02% of their Pilbara iron ore inventory. If the Shovelanna resource was material to Rio under the ASX Listing Rules Rio would be required to have it on the public record.
78. If the Rio Tinto export facilities were to operate continually at the full recently announced capacity of 140 million tonnes per annum, it will take 92.2 years for Rio Tinto to exploit its currently know stockpile of reserves and deposits.
79. Rio Tinto has a huge number of other projects and targets to work on and it is clear in light of this "embarrassment of riches" that the Shovelanna Hill deposit was of no real interest to the Rio JV.
80. Rio Tinto has displayed a disregard for the public interest by its persistent failure to explore, develop and advance E46/209 for many years. Such corporate behaviour should not be rewarded by the Minister exercising a discretion to overcome the consequences of the Rio JV's failure to organise a renewal of the tenement.

**The Rio JV did not believe that Shovelanna Hill could be developed.**

81. On 14 September 1994 Hamersley Iron Pty Ltd, on behalf of the Rio JV, wrote to the then Minister for Mines seeking an exemption from expenditure conditions in relation to E46/209. The letter indicated that based on the exploration conducted to date a resource of 240 million tonnes of indicated high grade ore had been estimated with an iron content of 62% and, inter alia, phosphorous content of 0.136%. The letter went on to state:

*"Given that the exploration license contains no low grade phosphorous material, little work can be undertaken on improving the current resource, as high grade phosphorous ore is not viable on the current market trends"*

82. On 17 August 1993 Hamersley Iron Pty Ltd, again on behalf of the Rio JV, wrote to the then Minister for Mines seeking an exemption from expenditure conditions in relation to E46/209. The letter was in similar terms to the letter described above, and stated that:

*"In EL46/209 - I, some 240,000,000 of indicated high grade ore (>62% Fe) has been estimated of the following grade:*

*Fe% 62.0, LOI% 4.9, P% 0.136*

*This high phosphorous goethite-hematite ore type is the most common of all ore types in the Pilbara. No high grade minable reserves of low phosphorous (<0.1%) ore has been identified in EL46/209-I. Until such time as steel making technology becomes capable of accepting high phosphorous ores without severe economic penalty, these ore types will be ranked behind low phosphorous Brockman and Marra Mamba ores in the marketplace. This deposit must therefore [be] classified as a long term resource option."*

83. Similar letters were sent in support of exemption from expenditure conditions in 1992, 1991 and (in relation to E46/08) in 1988 and 1987. Copies of the relevant applications for exemptions from expenditure conditions for E46/08 and E46/209 are annexed as **Tab L**.
84. The Rio JV statements about the high phosphorous content strongly indicate a lack of commitment to the development of the deposit. For a long period of time the Rio JV has held the view that the high phosphorous content of the orebody precludes mining and sale of the iron ore contained in it.
85. A review of the annual exploration reports filed by the Rio JV is revealing and contains the following statements in relation to the Shovelanna deposit:

Year	Comment
1986	<i>"In view of the high phosphorous content of the Brockman ore in the area, together with the poor market prospects and immense reserves of this type of goethite-hematite ore, it is recommended that no further exploration should be undertaken until market prospects improve. Market acceptance could be triggered by:</i>
	<i>(a) shortage of low phosphorous hematite ores, or</i>
	<i>(b) changes in steel making technology."</i>
1997	<i>"Further assessment of the Shovelanna Deposit is not recommended. There appears to be little potential for it locating outcropping or near surface areas of low phosphorous mineralisation."</i>

*“Further exploration around the existing Shovelanna Deposit is regarded as low priority.”*

*“The proximity of the Shovelanna mineralisation to the BHP Orebody 18 deposits suggests there may be a strategic value to this tenement apart from any future mineral value.”*

2002 *“It is given that the current resource contains no low phosphorous grade material, little work can be undertaken on improving the current resource, as high phosphorous ore is not considered viable under current market trends ”*

*“Key areas of E46/209 may be converted to Retention Licence once the terms and conditions of the retention licence regime have been negotiated. The iron ore industry awaits confirmation that the previous MPR response to the combined iron ore industry submission on retention licences remains current government policy.”*

2003 *“Given that the current resource contains no low phosphorous grade material, little work can be undertaken on improving the current resource, as high phosphorous ore is not considered viable under current market trends.”*

2004 *“Although considered significant and a valuable resource in the company portfolio, the resource at Shovelanna is unlikely to be developed or worked in the short to medium term. In the meantime, the company will seek to convert the resource into a Retention Licence ”*

86. Extract from the annual exploration reports lodged by the Rio JV is annexed at **Tab M**.
87. It is significant that BHP Billiton are mining the adjacent Orebody 18 deposit, which is contiguous with the Shovelanna mineralisation, and has now made an arrangement to purchase the ore from Shovelanna. It is highly unlikely that the phosphorous level at Shovelanna markedly changes across the tenement boundary to such a degree to prevent mining. Geology generally has no regard for artificial tenement boundaries. No work in recent times seems to have been undertaken to address this issue, which according to the Rio JV is the key issue hindering development.
88. Surface rock chip sampling outside of the resource area conducted by Rio Tinto in 1977 defined further iron ore mineralised zones with consistently low Phosphorous results. The samples averaged 0.084% P and 64.4% Fe from mineralised Joffre and Boolgeeda Formations. It is not clear why these lower Phosphorous and high grade iron zones were never further explored by the Rio JV. Given the highly positive results, a concerted effort to further explore should have been made. Indeed, the Rio JV proposed drilling of the outcrops in the Boolgeeda iron formation in its annual exploration reports lodged in 1977, 1978, 1979, 1980 and 1981. This drilling was never conducted.
89. Additionally, recent surface sampling of mineralisation by Cazaly outside of the resource area has confirmed further lower Phosphorous zones with results averaging 68.1% Fe and 0.06% P.
90. Between 1994 and 2004 the Rio JV does not appear to have sent any written material in support of its repeated applications for exemption from expenditure conditions setting out the reasons why such exemption should be granted. Rather, it typically sent a short covering letter simply requesting the exemption. The letters did not express any reason in support of the exemption and did not express any view on whether the orebody that had been identified could be mined and sold. This is highly unusual and in the normal course of events certainly would

not have been taken as a serious application for exemption by the DoIR if it were submitted by anyone else.

#### No other Rio Infrastructure in the Region

91. Neither Rio nor the Rio JV have an operating mine within at least 100kms or more of E46/678 and do not have any infrastructure close to E46/678. E46/678 is bordered by tenements owned by BHP and mining operations being conducted by BHP on Orebody 18. The infrastructure nearby includes a railway which is owned by BHP and lies within 3km of E46/678. There is no natural competitive advantage in the Rio JV maintaining access to the tenement. Further, E46/678 is unlikely to be a material resource for any of the existing operations of the Rio JV or Rio.

#### Royalty Negotiations

92. One measure of how seriously the Rio JV takes the Shovelanna resource would be to enquire whether the Shovelanna Resource was included in the recent negotiations between Rio Tinto Limited and the State in relation to royalties payable on iron ore production. Cazaly would respectfully invite the Minister to enquire whether the Shovelanna Resource was part of those negotiations. Cazaly understands that Rio Tinto Limited sought a reduction in royalties in respect of all existing production and mines that were "on the drawing board".
93. If the Shovelanna resource was included in the royalty discussion and Rio was ultimately successful in obtaining that resource, then the State will receive less in royalty income than if the deposit is developed by Cazaly. Alternatively, if the Shovelanna Resource is not the subject of discussions then this confirms Cazaly's contention that Rio had no short or medium term intention to develop the Shovelanna resource.

#### The Rio JV has Allowed the Tenement to Lapse Before

94. The Rio JV has previously allowed the tenement to lapse. The predecessor tenement to E46/209 was E46/08 which was also owned by the Rio JV. This tenement was granted on 12 February 1983 and expired on 11 February 1989. Again, Rio failed to lodge an application for renewal of this tenement before it expired. In that case, however, Rio waited for 90 days (in accordance with the provisions of the Act) and then applied for a fresh exploration license, namely E46/209.
95. The annual exploration report filed by the Rio JV for 1990 states that:
- "Since [1983] the area has been successfully renewed for periods of 12 months except for the period 15 September 1988 to 15 September 1989 when the application of the joint venture manager due to postal difficulties failed to reach the appropriate office in time." (emphasis added)*

#### E46/209 Should Not Have Been Granted

96. In the last annual exploration report which was lodged prior to E46/08 expiring, the Rio JV asserted: "In view of the high phosphorus content of the Brockman ore in the area, together with the poor market prospects and immense reserves of this type of goethite-hematite ore, it is recommended that no further exploration should be undertaken until market prospects improve." It is therefore difficult to see why the Rio JV subsequently applied for another exploration license over the same ground.

97. An exploration license both entitles and requires the holder to explore the ground. An application for an exploration license must be accompanied by a statement detailing the proposed exploration plan.
98. In view the Rio JV's recent recommendation that "no further exploration should be undertaken" it is difficult to see that there is any basis upon which the Rio JV should have been granted E46/209 over the same ground.
99. It does not appear that the Rio JV's view that no further exploration should be undertaken subsequently changed. Indeed, the Rio JV did not subsequently do any drilling on E46/209.
100. Furthermore, the Rio JV maintained in its 1997 annual exploration report that:
- (a) "Further assessment of the Shovelanna Deposit is not recommended. There appears to be little potential for locating outcropping or near surface areas of low phosphorus mineralisation."
  - (b) "Further exploration around the existing Shovelanna Deposit is regarded as low priority."
  - (c) "Further geological mapping or drilling is not considered necessary at this stage to enhance the resources."
101. In order to clarify the basis upon which E46/209 was granted to and held by the Rio JV, Cazaly Iron has lodged an FOI application to obtain, amongst other relevant documents, a copy of the exploration program accompanying the application for E46/209. The Rio JV has objected to the release of these documents.
102. It appears that E46/209 was utilised by the Rio JV merely to warehouse the ground. This view is supported by the references in the annual exploration reports lodged by the Rio JV in 2002, 2003 and 2004 to the foreshadowed conversion of E46/209 to a retention license "once the terms and conditions of the retention license regime have been negotiated".
103. The warehousing of land pursuant to an exploration license is contrary to the provisions of and also the policies and objectives underlying the Act. The Rio JV should never have been granted E46/209.

**Previous Applications for Exemption and Extension of Term Should Not Have Been Granted**

104. During the term of E46/209, The Rio JV was granted certificates of exemption from expenditure commitment for 11 out of 16 of the reporting years. Cazaly Iron has lodged an FOI application to obtain, amongst other relevant documents, a copy of the applications for exemption and the supporting statutory declarations. The Rio JV has objected to the release of these documents. On the basis of the detailed information contained in the annual exploration reports, it does not appear that there was any basis for the grant of certificates of exemption.
105. Section 102A does not provide for the automatic grant of exemptions in respect of tenements that are authorised for iron ore. It confers a discretion that must be exercised in accordance with the policies and objectives underlying the Act. Accordingly, exemptions cannot be granted merely to facilitate the warehousing of land under exploration licenses.
106. E46/209 was originally due to expire on 27 August 1994. The Rio JV was granted 11 extensions of term of one year each which extended the term of E46/209 until 26 August 2005. Cazaly Iron has lodged an FOI application to obtain, amongst other relevant documents, a copy of the 11 extension of time applications. The Rio JV has objected to the release of these

documents. On the basis of the detailed information contained in the annual exploration reports, it does not appear that there was any basis for the grant of the extensions of terms.

107. Pursuant to section 61(2) of the Mining the Minister may extend the term of an exploration license twice for prescribed circumstances and for further period in exceptional circumstances.
108. The only prescribed circumstance under regulation 23AB which is potential relevant is that "work already carried out under the license justifies further exploration on the basis that a significant mineralisation has been discovered". However, the Departmental guidelines state that in order for a extension of term to be granted on these grounds, the mineralisation must have been discovered during the term of the licence. The mineralisation situated on the ground the subject of E46/209 was discovered during the term of previous tenure. Furthermore, it cannot be said that further exploration was "justified" because Rio JV itself expressly asserted that in the annual exploration report in 1986 that "no further exploration should be undertaken" and in 1997 that "Further geological mapping or drilling is not considered necessary at this stage to enhance the resources." Accordingly the term of E46/209 should not have been extended beyond 1994.
109. Subsequent extensions of term required not merely prescribed circumstances but exceptional circumstances. This is a higher threshold so if there were no grounds to extend for two years, there were clearly no grounds to extend for a further 9 years. The Departmental guidelines state that exceptional circumstances would include circumstances which prevent exploration or that previous expenditure is exceptional an exploration is continuing. Neither of these circumstances are relevant. The fact that a tenement is authorised for iron ore is not of itself exceptional circumstances. There is no equivalent to section 102A which applies in relation to applications for an extension of term. The power to extend the term of an exploration license must be exercised in accordance with the policies and objectives underlying the Act. Accordingly, exemptions cannot be granted merely to facilitate the warehousing of land under exploration licenses.
110. In the circumstances, E46/209 should have previously expired (following the refusal of an application for an extension of term) or been forfeited (following the refusal of an exemption application).

**Assertion that Application for Extension of Time Would Have Been Granted if Lodged on Time**

111. Previously annexed at **Tab IJ** was a copy of the application for extension of time in respect of E46/209 which was prepared by the Rio JV but lodged late.
112. The Rio JV submissions asserts at paragraph 9 that "it is probable that, had it been received on time, the application to renew would have been granted".
113. This is incorrect. If the application had been determined according to law, it should have been refused.
114. The application to renew does not disclose any "exceptional circumstances" which would justify the grant of a further extension of time. In particular, the application does not include an exploration plan. Instead, the renewal application states: "At appropriate time this tenement may well be traded with a comparable BHP Billiton resource in close proximity to Hamersley Iron infrastructure in the future or the Pilbara Rail may be extended from Giles and Giles Midi eastward to exploit this deposit. Each of these scenarios is unlikely to happen in the short term. In the mean time the company will hold on to this large and valuable resource on which the company has already conducted considerable drilling and assessment. Additional close space drilling is not required at this stage and will only be conducted closer to development."

115. It is clear that the Rio JV was merely seeking to extend the term in order to warehouse the land. The warehousing of land under an exploration license is contrary to the provisions of and also the policies and objectives underlying the Act. On the basis of this statement, the application for an extension of term could not have been granted according to law.

#### **Incorrect Resource Statement**

116. Paragraph 9 of the Rio JV submission refers to exploration work conducted on E46/209 and goes on to state that:

*"This exploration work indicates an Inferred Resource of approximately 120 million tonnes of high phosphorous Brockman iron ore (the Shovelanna Resource) "*

This is linked to the submission at paragraph 43(a) which states that:

*"As a resource of 120 Mt, its development on a stand alone basis is not viable. However, the fact that it forms part of a greater resource for the RRJV makes it a much more viable prospect for development in due course "*

117. The statement that E46/209 contained an Inferred Resource of only approximately 120 million tonnes is false. :

118. In particular:

- (a) In 1990, the annual exploration report filed by the Rio JV stated that E46/209 contained an inferred resource of 241 million tonnes at 62% iron and 0.134% phosphorous. These figures are also used in applications for exemption from expenditure conditions referred to above. The figures were still being used as late as 1994. The figures were used in annual exploration reports in 1995 and 1996.
- (b) In 1997, the annual exploration report stated that due to perceived inadequacies in the previous estimate of the resource on E46/209, a re-estimate of the resource had been conducted. The re-estimated resource contained an indicated (as opposed to inferred) resource of 132 million tonnes of iron ore at 62.3% iron and 0.141% phosphorous. This implies that the inferred resource would be much larger than 132 million tonnes (or 120 million tonnes as claimed in the Rio JV submission) These figures were used again in the 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 annual exploration reports.
- (c) Cazaly has estimated the inferred resource at 216 million tonnes.

119. The inconsistency between the resource estimates previously provided to the Department and the resource estimate contained in the Rio JV Submission gives rise to a question as to whether the Rio JV:

- (a) was previously over-stating the size of the resource to justify the retention of the ground; or
- (b) is now under-stating the size of the resource to support its argument that the resource is not economic on a stand-alone basis.

#### **Paddington Gold Mine**

120. Paragraph 13 of the Rio JV submission states that in 1985, the then Minister for Mines exercised his discretion under section 111A to refuse a new mining lease application so that he could renew the existing mining lease in respect of the Paddington Gold Mine.

121. This is not correct. The Minister (David Parker) did not exercise his discretion under section 111A to refuse the subsequent tenement application. The Minister actually granted an extension of time pursuant to regulation 104 for lodgement of the renewal application. Having extended the time and granted the renewal of the mining lease, the land ceased to be open for mining with the consequence that the subsequent tenement application was necessarily refused.
122. The reason for the subsequent *Mining (Validation and Amendment Act 1986 (WA))* was that the time for lodgement of a renewal application cannot actually be extended pursuant to regulation 104.
123. The *Mining (Validation and Amendment Act 1986 (WA))*:
- (a) confirmed the validity of 4 separate mining leases where the time for lodgement of renewals had been extended;
  - (b) avoided this problem arising in the future by introducing a new section 111A(a) which allows for renewals to be grant after the expiry of a mining lease (this provision was in similar terms to the current section 111A(d)); and
124. The *Mining (Validation and Amendment Act 1986 (WA))* also introduced a new section 111A(b)(i) which provided for an additional and separate power to refuse tenements applications in the public interest (this provision was in similar terms to the current section 111A(c)(ii)). However this sub-section was not introduced to address the issue that arose in relation to the Paddington Gold Mine, as is acknowledged during the reading speeches.
125. The problem of the late lodgement of renewals is addressed by section 111A(a) and its current equivalent section 111A(d). It is limited in its application to mining leases. Parliament could have extended its application to exploration licenses but it chose not to.
126. Paragraph 15 of the Rio JV submission and the preceding material seems to be an attempt to liken the Rio JV's failure to renew E46/209 to the situation at the Paddington Gold Mine. In reality, the two situations are completely different. The Paddington Gold Mine involved a mining lease and an active gold mine. The Paddington situation put at risk the jobs of all those employed directly and indirectly at the gold mine. That gave rise to an issue of public interest.
127. The present situation is completely different. The Rio JV has not conducted any substantial work on the tenements for many years, no one is directly employed on the tenement and the Rio JV has displayed absolutely no interest in developing it. The only interests at stake are the private interests of the Rio JV and in particular its ability to warehouse the resource for future development or trade the resource to BHP Billiton Limited.

#### **Rhodes Ridge State Agreement Does Not Apply**

128. The Rio JV submission goes to some lengths to give the impression that TR5003H should have been seen as coming under the umbrella of the Rhodes Ridge State Agreement. In fact, TR5003H was converted to E46/8 pursuant to the transition provisions of the Act. The Rio JV chose to give up Temporary Reserve 5003H and, instead, apply for tenure under the Act. This was achieved through the grant of E46/8.
129. As pointed out above, the Rio JV allowed E46/8 to expire and applied for a fresh mining tenement under the Act which it was duly granted (E46/209). Any connection or link with the Rhodes Ridge State Agreement has long since been severed.

130. As Wayne Martin QC's opinion states, the letter from the then Premier, Sir Charles Court, to Texasgulf Australia did not give rise to any enduring rights or obligations as between Rio and the State.

### Concluding Matters

#### Attempts to Reach Resolution with the Rio JV

131. On 14 September 2005 Mr Nathan McMahon (the Joint Managing Director of Cazaly and Cazaly Resources ) arranged a meeting with Mr Laurie Kennedy of Rio Tinto Limited acting on behalf of the Rio JV. In an effort to resolve the matter amicably Mr McMahon offered to reimburse the Rio JV all of the money spent on E46/209 and issue the JV a royalty. This would mean that the members of the Rio JV would not need to book a loss. The Rio JV rejected this offer and made no further efforts to resolve the matter. The offer was made with the intention of expediting grant, and therefore exploration and development, of the project area.

#### Confidence in Uniform Application of Mining Act

132. In all the circumstances, it is Cazaly's submission that to terminate or refuse the application for E46/678 pursuant to section 111A would:
- (a) send a clear message to the Western Australian, Australian and international mining community that a valid, properly made tenement application can be terminated in favour of a large multinational company simply because that company failed to file a renewal application on time. This is particularly so in the case of an expired exploration licence that has not been the subject of any significant activity for the last 20 years.
  - (b) severely undermine confidence in the security of tenure that can be expected under the Act and undermine confidence that the Act will be applied uniformly to everyone;
  - (c) send a clear and highly counter productive message that large multinational companies can tie up tracts of land for long periods of time with very little expenditure and expect to be afforded preferential treatment in order to preserve their tenure even though for extended period of time they have frustrated the object and policy of the Act.
133. Conversely, rejection of the Section 111A submission will send a clear message that the Act applies to everyone equally. Everyone must comply with the time frames set out in the Act, including for renewal of tenements. An application that is validly made over land that is open for mining ought to be granted unless there is some exceptional circumstance that justifies refusal. As set out in Cazaly's first submission, examples of such circumstances might include situations where the applicant was of bad character, or an enemy alien or where the underlying ground was of exceptional historical or environmental importance. For the reasons set out above, there is no such exceptional circumstance in this case.

#### Reservation of Rights

134. In order to prepare a proper response to the Section 11A application, Cazaly requested the following information:
- (a) the documents referred to in the Rio Submission including, in particular, the statement of principles referred to in paragraph 21 of the Rio Submission and any related correspondence, file notes, memoranda etc;

- (b) documents requested pursuant to an application under the *Freedom of Information Act (WA)*.
135. Some of these documents have been provided to Cazaly, but most have not. In particular the documents referred to in paragraph 134(a) above, have not been provided. Cazaly is clearly entitled to these documents pursuant to the rules of procedural fairness.
136. Cazaly reserves the right to make further submissions if, upon disclosure of those documents, further relevant matters that ought to be brought to the Minister's attention are disclosed.

#### Conclusion

137. In conclusion:

- (a) It is Cazaly's submission that there is no power under Section 111A(1) of the Act for the Minister to dismiss an application for a mining tenement in circumstances where the application covers ground previously occupied by an exploration licence that has expired due to late lodgement of an extension of term application by the holder. This can only be done in relation to mining leases pursuant to Section 111A(1)(d).
- (b) If the Minister decides that he does have jurisdiction to dismiss Cazaly's application in the present circumstances, then it should be noted that the focus of the inquiry is as to whether there is any reason in the public interest why Cazaly's application should not be granted. This involves a focus on Cazaly and does not include a consideration of the activities or plans of any other person or entity.
- (c) The central submission of the Rio JV is that Cazaly does not have a track record in iron ore and has limited capacity to pursue exploration and development of the Shovelanna Resource. This is entirely incorrect:
- (i) Cazaly has expertise and exploration funding available to it through its joint venture with Echelon Resources;
- (ii) Cazaly has entered into an MOU with BHP Billiton for the purchase of the iron ore from the Shovelanna Resource. That relationship brings potential benefits and synergies of the Shovelanna Resource and BHP Billiton's Orebody 18 North can be mined as a unified mining operation. The relationship will also help ensure that the Shovelanna Resource is mined as quickly as possible and that the royalty flow to the State will commence as quickly as possible. Cazaly estimates that the royalty flow to the State within 10 years of the grant of E46/678 will be in excess of \$100 million; and
- (iii) Cazaly has access to all of the funds that it requires to develop the project through its agreement with Investec and through the exercise of options which will generate just under \$14 million in cash, if required.
- (d) This is not a situation where the Rio JV is asking for a mining lease, on which an operating mine is located and in which it has invested many millions of dollars, to be returned to it. The tenement that expired was an exploration licence that Rio had largely ignored for the last 20 years, and in so doing, frustrated the object and intent of the Mining Act.
- (e) The time frame set out in the Mining Act ought to apply equally to everyone. The time limit for lodgement of extension of term applications should apply equally to the Rio JV. Cazaly's application for E46/678 follows the normal processes of the Mining

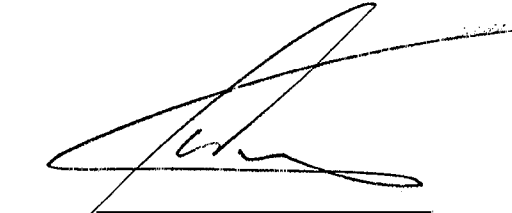
Act. Such an application should only be refused in exceptional circumstances. The Rio JV has not discharged its burden of proof to demonstrate that there is any public interest reason to refuse Cazaly's application for E46/678.

- (f) The Rio JV's application pursuant to Section 111A should therefore be dismissed.



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Nathan McMahon  
Joint Managing Director  
Cazaly Iron Pty Ltd



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Clive Jones  
Joint Managing Director  
Cazaly Iron Pty Ltd

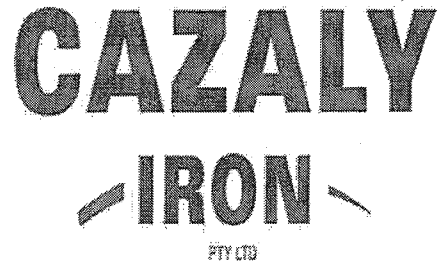
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**THIRD SUBMISSION TO MINISTER FOR STATE DEVELOPMENT  
IN OPPOSITION TO SUBMISSION  
BY RIO TINTO LIMITED, HANCOCK PROSPECTING PTY LTD  
AND WRIGHT PROSPECTING PTY LTD  
FOR DISMISSAL OF APPLICATION E46/678  
PURSUANT TO SECTION 111A OF THE MINING ACT**

**IMPORTANT NOTICE REGARDING LEGAL PROFESSIONAL PRIVILEGE**

**With respect to the opinions of Mr Martin QC referred to in these submissions, legal professional privilege in respect of those opinions is waived only in relation to the opinions themselves, and not in relation to any other document, including correspondence between Mr Martin QC and his instructing solicitors.**



14 February 2006

Mr Roy Burton - Director  
Mineral and Title Services Division  
Department of Industry and Resources  
Mineral House  
100 Plain Street  
EAST PERTH WA 6005

**Attention: Mr. Bob Stephens**

Dear Mr Stephens,

**Application by Cazaly Iron Pty Ltd for Exploration Licence 46/678**  
**Application by Rio Tinto Iron Ore pursuant to Section 111A of the *Mining Act 1978***

We refer to the letter dated 12 January 2006 from Rio Tinto Iron Ore (the **Rio JV**) addressed to you which constitutes the third submission lodged by the Rio JV in support of its application pursuant to Section 111A of the *Mining Act 1978*.

Cazaly Iron Pty Ltd (**Cazaly Iron**) confirms that no further response to the Rio JV's second or third submission is necessary because:

- (a) the Rio JV's second and third submissions simply respond to matters raised by Cazaly Iron in its submissions. Cazaly Iron confirms and reiterates all of the points in its first and second submissions and stands by each of them. The documents lodged in support of the submissions, information contained on the public record, and information contained in the records of the Department of Industry and Resources confirm all of the points that Cazaly Iron has made in its submissions; and
- (b) the procedure established by the Department of Industry and Resources in relation to Section 111A applications discourages the lodgement of submissions beyond the submission in reply. In the interests of assisting in establishing a manageable process, Cazaly will refrain from lodging any further submissions as Cazaly believes that the "public interest" is best served by all parties complying with both the Mining Act, 1978 as well as the procedures set in place by the Department of Industry and Resources.

In relation to the legal submissions that have been lodged, we wish to confirm that Mr Wayne Martin QC has reviewed the Opinion of Mr Ken Martin QC and Mr Peter Van Hattem dated 12 December 2005 which, in turn, responded to Mr W Martin's Opinion of 31 October 2005. Mr W Martin QC has confirmed that there is nothing in the Opinion of Mr K Martin and Mr P Van Hattem of 12 December 2005 which has caused him to alter the views expressed in his Opinion dated 31 October 2005 and which has previously been forwarded to you.

We would respectfully request that the process of preparing a summary of relevant information and collating the various submissions for forwarding to the Minister be expedited and completed as quickly as possible in the interests of finalising the process.

Yours faithfully,

**Nathan McMahon**  
**Joint Managing Director**  
**for CAZALY IRON PTY LTD**

**Clive Jones**  
**Joint Managing Director**  
**for CAZALY IRON PTY LTD**

cc. Sam Walsh  
Rio Tinto Iron Ore