

# IRON ORE PROCESSING (MINERALOGY PTY. LTD.) AGREEMENT BILL 2002

## COMMITTEE NOTES

### **General Outline**

This Act ratifies the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement* which was executed by the State and the other parties to the Agreement on 5 December 2001.

### **Clause 1**

The short title of the legislation is the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002*.

### **Clause 2**

Provides for the Bill to come into operation as an Act on the day it receives the Royal Assent.

### **Clause 3**

Defines how the Agreement contained in Schedule 1 is to be interpreted.

### **Clause 4**

**Subclause (1)** is the ratification of the Agreement.

**Subclause (2)** is the authorisation of the implementation of the Agreement.

**Subclause (3)** describes how the Agreement Act is to operate in regard to any written law (as defined in the Interpretation Act), or law.

### **Clause 5**

Empowers the State under Clause 27 which relates to resumption for the purposes of the Agreement.

## **SCHEDULE 1 - AGREEMENT**

The following describes major matters dealt with in the Agreement dated 5 December, 2001 that is scheduled to the Bill:

### **Parties**

The Agreement is between the State of Western Australia (“the State”), Mineralogy Pty. Ltd. (“the Company”) and six ‘project’ companies (“the Co-Proponents”).

### **Recitals**

The Recitals outline the intention of the parties in entering into the Agreement.

**Recital (a)** acknowledges that the Company has mining tenements in the Pilbara region.

**Recital (b)** acknowledges that the Company has granted, by way of Subsidiary Agreements, various rights in the tenements to the Co-Proponents.

**Recital (c)** acknowledges that the Company by itself or with Co-Proponents wishes to develop projects incorporating:

- Mining and concentration of iron ore;
- Processing of iron ore for the production and sale of high grade pellets, direct reduced iron and/or hot briquetted iron or steel;
- Transport of concentrates and processed iron ore within the Pilbara region;
- Establishment of new port facilities in the Pilbara region; and
- Shipping of processed iron ore through the new port facilities.

**Recital (d)** expresses the State’s agreement to assist these developments in order to promote industrial development and employment opportunity in Western Australia.

### **Clause 1 – Definitions**

This clause defines terms used throughout the Agreement.

### **Clause 2 – Interpretation**

This clause provides legal interpretations of how the Agreement is to be generally read.

### **Clause 3 – Initial obligations of the State**

Paragraph (a) requires the State to introduce prior to 31 December 2001 and sponsor a Bill into Parliament to ratify the Agreement by 30 June 2002 or such later dates as may be agreed.

Paragraph (b) requires the State to allow the Company and Co-Proponents to enter Crown Land to undertake studies subject to protection of the environment and sites of Aboriginal significance.

### **Clause 4 - Ratification and operation**

**Subclause (1)** states that the Agreement, other than the first four clauses, shall not operate until the ratification Bill is passed and comes into operation as an Act.

**Subclause (2)** provides for the cessation and determination of the Agreement if the Bill has not commenced to operate as an Act from 30 June 2002 or such later date as may be agreed.

**Subclause (3)** provides the manner in which the Agreement takes effect in regard to any Act or law.

### **Clause 5 - Initial Obligations of the Company**

**Subclause (1)** requires the Company to keep the State informed on a quarterly basis of its studies for the purposes of preparing initial project proposals under this Agreement.

**Subclause (2)** requires the reports under subclause (1) to advise the expected Western Australian and Australian content and any proposed foreign content with reasons therefor.

**Subclause (3)** requires the Company to co-operate and consult with the State with respect to matters referred to in subclause (1) and any other relevant studies, and to join with the State in infrastructure studies agreed with the Minister.

### **Clause 6 - Project proposals**

**Subclause (1)** requires the Company by itself or with Co-Proponents (the Project Proponents) to submit detailed proposals with respect to at least one project by 30 June 2003, and permits the submission thereafter of proposals for new projects.

**Subclause (2)** sets out the matters to be addressed in the proposals.

**Subclause (3)** enables the proposals to be submitted in any order, with the consent of the Minister.

**Subclause (4)** enables the Project Proponents to use existing infrastructure, with the consent of the Minister.

**Subclause (5)** requires that proposals make provision for location of other industries at Cape Preston and for access for those industries to the port facilities.

**Subclause (6)** requires the Project Proponents to submit to the Minister additional information on aspects of the project to be sourced from outside Australia, and demonstrate to the Minister's satisfaction the availability of finance and the readiness of the Project Proponents to carry out the project.

**Subclause (7)** allows an extension of time of up to 18 months for submission of evidence of availability of finance and readiness to proceed if the financial support of an Export Credit Agency is being sought. The Minister may consider and approve the proposal however the grant of any title pursuant to the approval is suspended until the Minister is satisfied of the availability of finance and the readiness of the Project Proponents to carry out the project.

**Subclause (8)** requires the Minister to notify the Project Proponents if he is not satisfied with the evidence provided under subclause (6) and to give the Project Proponents an opportunity to submit further or different evidence and allows the Project Proponents to submit the Minister's decision to arbitration.

## **Clause 7 - Consideration of proposals**

**Subclause (1)** details the procedures for the consideration of proposals.

**Subclause (2)** requires the Minister to give notice of his decision to the Proponents within 2 months of receiving the proposals, or 2 months of authority to proceed under the EP Act or native title processes, whichever is the later.

**Subclause (3)** requires that the Minister consult with the Proponents if he rejects or requires alteration to a proposal.

**Subclause (4)** makes certain decisions of the Minister under this Clause subject to arbitration.

**Subclause (5)** details how an arbitrated decision on a proposal is to be implemented.

**Subclause (6)** requires the Proponents to implement the approved proposals.

**Subclause (7)** provides for determination of the Agreement if the proposals for at least one project are not approved within a specified time period.

**Clause 8 - Additional proposals**

**Subclause (1)** enables the Proponents to submit additional proposals if they wish to significantly alter their activities under approved proposals.

**Subclause (2)** states that the provisions of Clause 6 and Clause 7 (except subclauses (5)(a) (6) and (7)) will apply in relation to the consideration of additional proposals, but the Proponents may withdraw additional proposals before approval. The Proponent must implement approved additional proposals.

**Clause 9 - Mining Tenements**

**Subclauses (1) to (3)** relate to Area A shown on Plan 1.

**Subclause (1)** provides for reinstatement of exploration licence 08/643 that was previously held by the Company.

**Subclause (2)** provides that during the currency of the Agreement mining tenements held by the Proponents are subject to the Mining Act, as modified in relation to rental, assignment, surrender and expenditure requirements.

**Subclause (3)** provides for a refund from the State to the Company of excess rent paid before the commencement date.

**Subclauses (4) and (5)** relate to Area B1 shown on Plan 1.

**Subclause (4)** provides for reinstatement of exploration licences 47/636, 47/637 and 47/638 that were previously held by the Company.

**Subclause (5)** provides that exploration licences granted under subclause (4) are subject to the Mining Act, as modified in relation to term, assignment, surrender and expenditure requirements.

**Subclause (6)** provides that exploration licences comprising Area B2 on Plan 1 are subject to the Mining Act, as modified in relation to term, assignment, surrender and expenditure requirements.

**Subclause (7)** allows for mining leases granted to the Company in Areas B1 and B2 to be included in Area A and for other areas within Area A to be surrendered if necessary to limit the total area of Area A to 777 square kilometres.

**Subclause (8)** allows the Company, with the Minister's consent, to withdraw mining tenements and exploration licences from the areas covered by the Agreement subject to defined restrictions.

## **Clause 10 – Mining leases**

**Subclause (1)** requires the State to grant mining leases in the form of the Second Schedule where such leases are part of approved proposals. The mining leases will be subject to the Mining Act as modified by the Agreement, and will be for a period of 21 years with a right to an automatic extension for 2 further periods of 21 years.

**Subclause (2)** provides for mining leases that are dedicated to a Project to have a term of 21 years from approval of proposals with two automatic extensions of 21 years. The dedication to one Project will stand for the term of the lease.

**Subclause (3)** exempts the Company from expenditure conditions on mining leases covered by the Agreement.

**Subclause (4)** requires the Proponents to lodge with the Department of Mineral and Petroleum Resources various reports in relation to the mining tenements, as required under the Mining Act or as requested by the Department.

**Subclause (5)** allows the State and third parties access to the mining tenements so long as it does not interfere with the Proponents' activities under the Agreement.

**Subclause (6)** allows the Proponents to surrender to the State portions of the mining tenements.

**Subclause (7)** allows the Proponents to obtain stone, clay and gravel from the mining tenements for the construction of works without paying royalty.

**Subclause (8)** modifies regulation 28A of the Mining Regulations 1981 so that additional rental is calculated on each tonne of iron ore concentrate in lieu of the iron ore from which the concentrates are produced.

## **Clause 11 - Royalties**

**Subclause (1)** details the royalties to be paid by the Proponents, allowing for discounts where iron ore undergoes further processing.

**Subclause (2)** details how the "imputed value" for the purposes of determining the royalty under subclause (1) is determined.

**Subclause (3)** specifies reporting requirements and payment times in relation to royalties.

**Subclause (4)** allows for inspection of records of the Proponents and details the measurement of quantities of minerals.

**Subclause (5)** allows for the determination of an "alternative method" for calculating imputed values.

**Subclause (6)** specifies some additional definitions relevant to this Clause.

### **Clause 12 - Use of local labour professional services and materials**

**Subclause (1)** requires the Project Proponents to give preference to local labour, professionals, suppliers and services where economically practical unless otherwise agreed by the Minister or the Project Proponents can demonstrate that this is impractical to achieve.

**Subclause (2)** requires the Project Proponents to include the same local content obligations, as in subclause (1), in contracts with third parties unless otherwise agreed by the Minister.

**Subclause (3)** details the frequency of reporting to the Minister concerning the implementation of the local content requirements.

**Subclause (4)** requires the Proponents to keep the Minister informed on elements of the project proposed to be sourced overseas and consult with the Minister.

### **Clause 13 - Roads**

**Subclause (1)** requires the Proponents to be responsible for the cost of construction and maintenance of their private roads.

**Subclause (2)** provides that public roads used by the Proponents under this Agreement will be maintained by the State.

**Subclause (3)** provides that where public roads require upgrading or repairing as a result of the Proponents' operations, then the Proponents are required to contribute equitably to the cost of that work.

**Subclause (4)** enables the State to take over private roads required for public use.

### **Clause 14 – Electricity**

Allows the Proponents to install and operate electricity generation equipment and transmit electricity for the projects under this Agreement in accordance with approved proposals.

### **Clause 15 – Water - desalination**

**Subclause (1)** records that the Company and Co-Proponents propose to provide for their water requirements by desalination of sea water and relieves the State of obligation to provide water.

**Subclause (2)** requires the Proponents to be responsible for the cost of construction and maintenance of their water supply.

### **Clause 16 – Water – potable supplies**

**Subclause (1)** requires the Proponents to keep the Minister advised of water requirements that cannot be obtained by desalination.

**Subclause (2)** enables the Water Corporation to enter into arrangements with Proponents to supply or give access to potable water, subject to its availability.

### **Clause 17 – Planning of accommodation**

Requires the Company to confer with the Minister and the relevant local authorities before submitting project proposals with a view to ensuring appropriate planning is being made for housing and accommodation.

### **Clause 18 – Provision of Mining Lease Accommodation**

**Subclause (1)** permits the Company to provide workforce accommodation at the mine site to generally accepted mining industry standards.

**Subclause (2)** details facilities that may be included in Mining Lease Accommodation.

**Subclause (3)** specifies that Mining Lease Accommodation will be provided at Project Proponents' cost.

**Subclause (4)** requires removal of the Mining Lease Accommodation when no longer in use.

**Subclause (5)** limits occupancy of Mining Lease Accommodation to persons directly involved in a Project.

**Subclause (6)** prohibits dependants residing or pets being kept on a Mining Lease, except as agreed by the Minister.

**Subclause (7)** requires Project Proponents to seek the Minister's consent for upgrading, replacement, relocation or new Mining Lease Accommodation.

### **Clause 19 – Provision of accommodation outside Mining Leases**

**Subclause (1)** enables Project Proponents to provide accommodation at no cost to the State in Karratha and/or any other locality off the Mining Leases.

**Subclause (2)** enables the establishment of one new town by the Company.



**Subclause (3)** requires the Company and the Minister to agree on a location for the town within the Pilbara.

**Subclause (4)** requires the Company to notify the Minister of its proposal to establish a new town.

**Subclause (5)** details the matters to be covered in a proposal for a new town if the Minister approves submission of detailed proposals.

**Subclause (6)** requires the State to grant leasehold land for the establishment of the town.

**Subclause (7)** requires the Company to pay the capital cost and reasonable charges for State provided services in the town other than operational costs of educational, medical or police services.

## **Clause 20 - Lands**

**Subclause (1)** requires the State to grant to Project Proponents, in accordance with approved proposals and subject to specified conditions, leases, licences or other title for the purpose of obtaining appropriate tenure for the purposes of the Project. The granted tenure will cease after 6 months notice if construction is not completed in accordance with approved proposals or if the land ceases to be used.

**Subclause (2)** provides for any leases, licences, or easements that have been granted under subclause (1) before all proposals have been approved, to be determined when the Agreement is determined or if all proposals have not been approved within 12 months.

**Subclause (3)** requires the State, where titles are determined in the area that was exploration licence 08/636 and if the Company applies, to grant a one year exploration licence under the Mining Act over the area concerned.

**Subclause (4)** requires that, if title granted under subclause (1) is terminated because of failure to meet development conditions, the State will keep the land available to the Company for 12 months, except if the land concerned is an exploration licence granted pursuant to subclause (3).

**Subclause (5)** limits the application of subclause (3) to one Project, unless otherwise approved by the Minister.

**Subclause (6)** modifies the Land Act for the purpose of “fast tracking” the grant of tenure to the Proponents.

**Subclause (7)** modifies the Aboriginal Heritage Act 1972 by deeming the Company as the land owner for the purposes of section 18 of that Act. Section 18 deals with consents to disturb Aboriginal sites.

**Clause 21 - Port Facilities**

**Subclause (1)** requires the Company to develop port facilities in accordance with approved proposals.

**Subclause (2)** requires that all shiploading and shipping facilities are constructed, operated and maintained in accordance with relevant legislation.

**Subclause (3)** requires that the Company and the Project Proponents allow third parties to use the port facilities at reasonable charges provided this does not unduly interfere with the Company's or Project Proponents' operations.

**Subclause (4)** enables the Minister to make by-laws in relation to third party use of the port facilities.

**Clause 22 - Railway**

**Subclause (1)** allows the Company to construct and operate a railway if part of an approved proposal.

**Subclause (2)** requires the Company to construct the railway as specified in the approved proposals, provide necessary apparatus and equipment for the railway's operation and to operate the railway with sufficient stock and equipment to meet their rail transport requirements.

**Subclause (3)** requires the Company to operate the railway in a safe manner and provide for current and future requirements for road, rail and other crossings of the railway.

**Subclause (4)** requires the Company to carry iron ore of third parties in accordance with arrangements between the Company and the State where such activity does not interfere with the Proponent's operations under the Agreement, and subject to the prior approval of the Company.

**Subclause (5)** requires the Company to carry passengers and freight of the State and third parties where such activity does not interfere with the Proponent's operations under the Agreement, and subject to the payment of charges as prescribed, but the Company shall not be deemed a common carrier.

**Clause 23 – Training levy exemption**

Provides exemption from the provisions of the Building and Construction Industry Training Levy Act 1990 and the Building and Construction Industry Training Fund and Levy Collection Act 1990.

**Clause 24 – Zoning**

Provides for any lands the subject of a lease, licence or other title to continue to be zoned for the purpose for which it was granted.

**Clause 25 - Rating**

**Subclause (1)** ensures that the land subject to the Agreement will be rated on an unimproved value, consistent with other State Agreements.

**Subclause (2)** provides for multiple leases associated with a Project to be treated as one lease for rating purposes.

**Clause 26 - No Discriminatory Rates**

Ensures that any land the subject of the Agreement will not be subject to discriminatory rates taxes or charges.

**Clause 27 - Resumption for the purposes of this Agreement**

**Subclause (1)** allows the State to resume any land that is necessary for the project and grant leases or other forms of tenure to the Company over that land.

**Subclause (2)** defines land for the purposes of this Agreement and the Land Acquisition and Public Works Act.

**Subclause (3)** requires the Company to meet the costs of any resumption.

**Clause 28 – Co-Proponents interests**

**Subclause (1)** ensures that this Agreement overrides the Subsidiary Agreements between the Company and the Co-Proponents.

**Subclause (2)** provides for up front approval of any assignments that are contained in the Subsidiary Agreements and have been advised to the State before the Agreement is executed.

**Clause 29 – Infrastructure and lands**

Requires the Company to warrant to the State that it has reached agreement with Project Proponents on the use of infrastructure and lands controlled by the Company.

**Clause 30 - No Resumption**

**Subclause (1)** provides that the State shall not resume or allow to be resumed any of the property or equipment belonging to the Proponents which is used for the purposes of the Agreement.

**Subclause (2)** provides that, except in Area D, the State shall not resume or create any easement over any of the lands the subject of the Agreement which may prejudice or interfere with the Proponent's activities under the Agreement without the consent of the Company (which shall not be unreasonably withheld).

In Area D the State may create easements provided these do not affect Project Proponents or their contractors.

**Clause 31 - Assignment**

**Subclause (1)** provides for the assignment of rights by the Proponents, subject to the execution of a Deed of Covenant by the party receiving the benefit of the rights assigned.

**Subclause (2)** provides that, where an assignment is approved by the Minister, the Assignor may be released from liability for the performance of obligations under the Agreement.

**Subclause (3)** ensures that an assignment of interest made under the Agreement automatically flows to any titles granted under the Mining Act, the Transfer of Land Act and the Land Administration Act.

**Clause 32 - Variation**

**Subclause (1)** enables the Agreement to be varied from time to time by agreement in writing.

**Subclause (2)** requires any variation to the Agreement to be tabled in Parliament.

**Subclause (3)** details how the variation Agreement may come into operation.

**Clause 33 - Force Majeure**

**Subclause (1)** recognises temporary suspension of Agreement obligations as a result of circumstances beyond the control of the Proponents or the State.

**Subclause (2)** defines the events and circumstances referred to above.

**Subclause (3)** requires the party who is affected by such events or circumstances to give prompt notice to the other party and shall use its best endeavours to minimise the effects thereof.

### **Clause 34 - Power to extend periods**

Provides, at the request of the Proponents, for the Minister to extend dates or periods referred to in the Agreement.

### **Clause 35 - Determination of Agreement**

**Subclause (1)** specifies the events that can result in determination of the Agreement.

**Subclause (2)** requires specified details to be given in a notice of determination.

**Subclause (3)** enables the Proponents to contest a notice of default and allows the matter to be decided by arbitration. Where the arbitration decision is against the Proponents and the arbitrator finds there was a genuine dispute, the time for complying with such a decision shall be not less than 90 days.

**Subclause (4)** enables the State to remedy a default and recover any costs of so doing from the Proponents.

### **Clause 36 - Effect of Determination or cessation of Agreement**

**Subclause (1)** details the effect of determination of the Agreement if it determines in respect of all Projects under the Agreement.

**Subclause (2)** details the effect of determination of the Agreement if it determines in respect of one Project when there is more than one Project under the Agreement.

In either case any leases, licences, easements or other titles shall continue in force under the relevant Act.

### **Clause 37 – Commonwealth law and EP Act**

**Subclause (1)** ensures that this Agreement does not override Commonwealth legislation.

**Subclause (2)** ensures that this Agreement does not override the Environmental Protection Act 1986.

**Clause 38 - Indemnity**

Provides indemnity to the State for activities undertaken under the Agreement by the Proponents or by third parties on its behalf. This indemnity does not apply where the State or its agents are negligent in carrying out required work for the Proponents.

**Clause 39 - Commonwealth licences and consents**

**Subclause (1)** requires the Proponents to apply to the Commonwealth or its agency (as required) for licences necessary for the Proponents to enter into this Agreement or carry out its required obligations.

**Subclause (2)** requires the State to support the Proponent's applications for such licences as required.

**Clause 40 - Subcontracting**

The State and the Proponents may sub-contract to third parties any activity it is obliged to carry out under this Agreement.

**Clause 41 - Stamp duty exemption**

**Subclause (1)** provides for limited stamp duty exemption on specific instruments for a period of 3 years.

**Subclause (2)** provides that any stamp duty paid on any exempted document or instrument before the commencement date should be refunded to the person who paid the duty.

**Clause 42 - Arbitration**

**Subclause (1)** defines the arbitration process that may be used to resolve disputes arising from the operation of the Agreement.

**Subclause (2)** provides that arbitration shall not apply where the State, the Minister or any other Minister has a discretionary power, unless otherwise provided in the Agreement.

**Subclause (3)** empowers an arbitrator to grant an interim extension to any date or period in the Agreement to preserve rights while a matter is before arbitration.

**Clause 43 - Consultation**

Requires the Proponents to consult with the State on any action that the Proponent proposes with any other party (including the Commonwealth), which may affect the State's interests under the Agreement.

**Clause 44 - Notices**

Specifies how notices are to be given by the State to the Proponents and vice versa.

**Clause 45 – Term of Agreement**

**Subclause (1)** defines the term of the Agreement as being 60 years from the date the Bill comes into operation as an Act.

**Subclause (2)** enables the parties to meet in the fiftieth year after the commencement of the Agreement to consider an extension to the term of the Agreement.

**Subclause (3)** provides that any agreement reached between the parties above shall be recorded and treated as a variation to the Agreement.

**Clause 46 - Applicable law**

Provides that the Agreement will be interpreted according to Western Australian applicable law.

**Plan 1** – shows the areas of land covered by the Agreement.

**Plan 2** – shows the area of land near Cape Preston, within the land covered by the Agreement, that is identified for third party users (Area D).

**The First Schedule** – Lists the Subsidiary Agreements.

**The Second Schedule** – Sets out the agreed form of Mining Lease.