

judgment no. 28, 1974

28

IN THE PRIVY COUNCIL

No. 20 of 1973

ON APPEAL from the Supreme Court of New South Wales in its Equitable Jurisdiction in Suit No. 2083 of 1971

BETWEEN:

ASSOCIATED MINERALS CONSOLIDATED LIMITED  
and WYONG ALLUVIALS PTY, LIMITED

Appellants (Defendants)

AND:

WYONG SHIRE COUNCIL

Respondent (Plaintiff)

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 4 JAN 1975  
25 RUSSIA SQUARE  
LONDON, W.C.1.

## APPEAL BOOK

VOLUME I

SOLICITORS FOR THE APPELLANTS

Robson Cowlshaw & Macready,  
34 Hunter Street,  
SYDNEY

SOLICITORS FOR THE RESPONDENT

S.G. Taperell, Rutledge  
& Fennell,  
Suite 9, Civic Centre Arcade,  
The Entrance Road,  
THE ENTRANCE

By their City Agents:

Marsh, Harvey & Cropper,  
53 Martin Place,  
SYDNEY

IN THE PRIVY COUNCIL

No. 20 of 1973

ON APPEAL from the Supreme Court of New South Wales in its  
Equitable Jurisdiction in Suit No. 2083 of 1971

BETWEEN:

ASSOCIATED MINERALS CONSOLIDATED LIMITED  
and WYONG ALLUVIALS PTY. LIMITED

Appellants (Defendants)

AND:

WYONG SHIRE COUNCIL

Respondent (Plaintiff)

## APPEAL BOOK

---

VOLUME I

SOLICITORS FOR THE APPELLANTS

Robson Cowlshaw & Macready,  
34 Hunter Street,  
SYDNEY

SOLICITORS FOR THE RESPONDENT

S.C. Taperell, Rutledge  
& Fennell,  
Suite 9, Civic Centre Arcade,  
The Entrance Road,  
THE ENTRANCE

By their City Agents:

Marsh, Harvey & Cropper,  
53 Martin Place,  
SYDNEY

ON APPEAL from the Supreme Court of New South Wales in its  
Equitable Jurisdiction in Suit No. 2083 of 1971

BETWEEN:

ASSOCIATED MINERALS CONSOLIDATED LIMITED and  
WYONG ALLUVIALS PTY. LIMITED

Appellants (Defendants)

AND:

WYONG SHIRE COUNCIL

Respondent (Plaintiff)

TRANSCRIPT RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART 1

List of documents included in the Transcript Record of  
Proceedings.

| No. | Description of Document   | Date                | Page |
|-----|---|---------------------|------|
| 1.  | Statement of Claim  | 23rd December, 1971 | 1    |
| 2.  | Statement of Defence  | 10th January, 1972  | 10   |
| 3.  | Replication   | 27th January, 1972  | 21   |
| 4.  | Rejoinder   | 7th February, 1972  | 24   |
| 5.  | Transcript of Oral Evidence before<br>his Honour Mr. Justice Hope |                     |      |

APPELLANTS (DEFENDANTS) EVIDENCE:

PINTER - Joseph

|                   |                     |    |
|-------------------|---------------------|----|
| Examination       | 22nd February, 1972 | 27 |
| Cross-Examination | 22nd February, 1972 | 36 |

MINOGUE - John Patrick

|                   |                     |    |
|-------------------|---------------------|----|
| Examination       | 22nd February, 1972 | 47 |
| Cross-Examination | 22nd February, 1972 | 55 |
| Re-Examination    | 22nd February, 1972 | 58 |

McKELLAR - John Bruce

|                           |                     |     |
|---------------------------|---------------------|-----|
| Examination               | 22nd February, 1972 | 60  |
| Examination continued     | 23rd February, 1972 | 96  |
| Cross-Examination         | 23rd February, 1972 | 112 |
| Re-Examination            | 24th February, 1972 | 144 |
| Further Cross-Examination | 24th February, 1972 | 158 |
| Further Re-Examination    | 24th February, 1972 | 182 |

| No.                                      | Description of Document | Date                | Page |
|--|-------------------------|---------------------|------|
| <u>APPELLANTS (DEFENDANTS) EVIDENCE:</u> |                         |                     |      |
| <u>(Continued)</u>                       |                         |                     |      |
| <u>GRIFFITH</u> - Sydney John            |                         |                     |      |
|  | Examination             | 22nd February, 1972 | 78   |
|  | Cross-Examination       | 22nd February, 1972 | 86   |
| <u>CLOSE</u> - Frank Archibald           |                         |                     |      |
|  | Examination             | 23rd February, 1972 | 88   |
|  | Cross-Examination       | 23rd February, 1972 | 91   |
| <u>NOLAN</u> - Richard Charles           |                         |                     |      |
|  | Examination             | 23rd February, 1972 | 91   |
|  | Cross-Examination       | 23rd February, 1972 | 94   |
| <u>THOMAS</u> - Thomas Wesley            |                         |                     |      |
|  | Examination             | 24th February, 1972 | 160  |
|  | Cross-Examination       | 24th February, 1972 | 162  |
| <u>WELLS</u> - Andrew Archibald          |                         |                     |      |
|  | Examination             | 24th February, 1972 | 163  |
|  | Cross-Examination       | 24th February, 1972 | 169  |
|  | Re-Examination          | 24th February, 1972 | 179  |
| <u>RESPONDENT'S (PLAINTIFF'S)</u>        |                         |                     |      |
| <u>EVIDENCE IN REPLY:</u>                |                         |                     |      |
| <u>CLARK</u> - Stephen                   |                         |                     |      |
|  | Examination             | 24th February, 1972 | 184  |
|  | Cross-Examination       | 24th February, 1972 | 194  |
|  | Re-Examination          | 24th February, 1972 | 205  |
| <u>TURTON</u> - Flora                    |                         |                     |      |
|  | Examination             | 24th February, 1972 | 206  |
|  | Cross-Examination       | 28th February, 1972 | 216  |
|  | Re-Examination          | 28th February, 1972 | 222  |
| <u>McKENZIE</u> - Bruce                  |                         |                     |      |
|  | Examination             | 28th February, 1972 | 222  |
| <u>STRONG</u> - Alan                     |                         |                     |      |
|  | Examination             | 28th February, 1972 | 230  |
|  | Cross-Examination       | 28th February, 1972 | 236  |
| <u>KEATING</u> - Robert Thomas           |                         |                     |      |
|  | Examination             | 28th February, 1972 | 237  |
|  | Cross-Examination       | 28th February, 1972 | 239  |
|  | Re-Examination          | 28th February, 1972 | 241  |

| No.                               | Description of Document  | Date                | Page |
|-----------------------------------|--|---------------------|------|
| <u>RESPONDENT'S (PLAINTIFF'S)</u> |  |                     |      |
| <u>EVIDENCE IN REPLY:</u>         |  |                     |      |
| (Continued)                       |  |                     |      |
| <u>CHALMERS</u> - Hugh Malcolm    |  |                     |      |
|                                   | Examination  | 28th February, 1972 | 242  |
|                                   | Cross-Examination  | 28th February, 1972 | 249  |
|                                   | Re-Examination   | 28th February, 1972 | 256  |
| <u>STEINKE</u> - John             |  |                     |      |
|                                   | Examination  | 28th February, 1972 | 256  |
| 6.                                | Reasons for Judgment of his Honour Mr. Justice Hope            | 9th May, 1972       | 263  |
| 7.                                | Decree   | 18th May, 1972      | 342  |
| 8.                                | Order granting conditional Leave to Appeal to Privy Council    | 26th May, 1972      | 346  |
| 9.                                | Order granting final leave to Appeal to Privy Council          | 15th December, 1972 | 350  |
| 10.                               | Certificate of Registrar in Equity verifying Transcript Record |                     | 352  |
| 11.                               | Certificate of Chief Justice                                   |                     | 354  |

PART II

List of Formal and other Documents and Exhibits omitted from the Transcript Record of Proceedings.

| No. | Description of Document                           | Date              | Page |
|-----|---|-------------------|------|
| 1.  | Exhibit "A" - letter and accompanying direction   | 6th January, 1961 |      |
| 2.  | Exhibit "B" - Extract from Government Gazette     | 6th January, 1961 |      |
| 3.  | Exhibit "G" - being four photographs              |                   |      |
| 4.  | Exhibit "H" - being two slides                    |                   |      |
| 5.  | Exhibit "J" - being five slides excluding writing |                   |      |
| 6.  | Exhibit "K" - being 3 slides of mined areas       |                   |      |

| No. | Description of Document   | Date               |
|-----|---|--------------------|
| 7.  | Exhibit "L" - being slides of Soldiers Beach                                |                    |
| 8.  | Exhibit "M" - being two slides of Elizabeth Bay                             |                    |
| 9.  | Exhibit "N" - being two slides of Hudgee area                               |                    |
| 10. | Exhibit "O" - being five slides of Putty Beach                              |                    |
| 11. | Exhibit "Q" - Photo album   |                    |
| 12. | Exhibit "R" - Newspaper being "Wyong and Tuggerah Lakes News"               | 18th January, 1961 |
| 13. | Exhibit "T" - Planning Scheme Maps  |                    |
| 14. | Exhibit 2 - Book entitled "Bore Hole Logs" AP 1653                          |                    |
| 15. | Exhibit 3 - Aerial photograph   |                    |
| 16. | Exhibit 10 - Bore Hole Logs in respect of M.L. 48 from 1964 to 20/12/66     |                    |
| 17. | Exhibit 11 - Bore Hole Logs in respect of M.L. 48 from 22/11/69 to 12/12/69 |                    |
| 18. | Exhibit 12 - Bore Hole Logs in respect of M.L. 42 from 20/9/64 to 2/8/1966  |                    |
| 19. | Exhibit 13 - Bore Hole Logs in respect of M.L. 42 from 2/5/69 to 6/2/70     |                    |
| 20. | Exhibit 24 - being Eleven photographs.                                      |                    |
| 21. | Exhibit 26 - Plans marked T15, T16, T19 and T20                             |                    |
| 22. | Exhibit 27 - composite print of dredge path on western part of M.L. 44      |                    |
| 23. | Exhibit 28 - Reduced scale plan of dredge path                              |                    |

| No. | Description of Document   | Date           |
|-----|---|----------------|
| 24. | Exhibit 29 - Photograph of part of Stradbroke Island leases                                       |                |
| 25. | Exhibit 30 - Dredge path plan for M.L. 42 and M.L. 48   |                |
| 26. | Exhibit 31 - Composite dredge path plan   |                |
| 27. | Exhibit 32 - Tentative dredge path plan   |                |
| 28. | Exhibit 33 - Plan of dredge path of plant 10/10   |                |
| 29. | Copy of Notes of his Honour Mr. Justice Hope covering hearing 21st February 1972 to 18th May 1972 |                |
| 30. | Notice of Motion  | 23rd May, 1972 |
| 31. | Affidavit of John Bruce <u>McKELLAR</u>   | 23rd May, 1972 |
| 32. | Certificate of Registrar in Equity of due compliance with conditions of Order                     |                |
| 33. | Notice of Motion for Final Leave to Appeal  |                |

PART III

List of Original Exhibits sent with Transcript Record of Proceedings

| Exhibit Mark | By Whom Tendered | Nature of Exhibit   | Page                                |
|--------------|------------------|---|-------------------------------------|
| "C"          | Plaintiff        | Shire of Wyong Planning Scheme Ordinance                    | (See Volume II for Page references) |
| "D"          | Plaintiff        | Certified copy of Resolution of Plaintiff made on 22/7/1971 |                                     |
| "E"          | Plaintiff        | Certified copy of Resolution of Plaintiff made on 9/12/1971 |                                     |
| "F"          | Plaintiff        | Letters dated 18/11/71 and 29/11/1971                       |                                     |
| "P"          | Plaintiff        | Aerial photograph as at January 1972                        |                                     |
| "S"          | Plaintiff        | Copy letter dated 25/2/1972                                 |                                     |

| Exhibit Mark | By Whom Tendered | Nature of Exhibit   | Page                                |
|--------------|------------------|---|-------------------------------------|
| 1.           | Defendants       | Plan of Mining Leases' sites  | (See Volume II for Page references) |
| 4.           | Defendants       | Special Mining Leases 176, 202, 369 and 175   |                                     |
| 5.           | Defendants       | Plan No. 1312 showing sites of bore holes   |                                     |
| 6.           | Defendants       | Operations plan   |                                     |
| 7.           | Defendants       | Copies of documents from file of the Department of Mines relating to M.L. 44 and the previous AP 1653 |                                     |
| 8.           | Defendants       | Authority to Prospect 1653  |                                     |
| 9.           | Defendants       | Plan taken from the Mines Department file and accompanying letter dated 29/11/1956                    |                                     |
| 14.          | Defendants       | Document printed by Wyong Minerals Limited  |                                     |
| 15.          | Defendants       | Plan prepared by Mr. Close previously m.f.i. 1  |                                     |
| 16.          | Defendants       | Mr. Nolan's plan previously m.f.i. 2  |                                     |
| 17.          | Defendants       | Correspondence between Plaintiff and Defendants   |                                     |
| 18.          | Defendants       | Copy of documents from Mines Department in relation to M.L. 48  |                                     |
| 19.          | Defendants       | Copy of documents from Mines Department in relation to M.L.51   |                                     |
| 20.          | Defendants       | Correspondence between Mines Department and Plaintiff   |                                     |
| 21.          | Defendants       | Authority to Prospect No. 156   |                                     |
| 22.          | Defendants       | Authority to Prospect No. 157   |                                     |
| 23.          | Defendants       | Affidavit of John Bruce <u>McKELLAR</u> sworn 10th December 1971                                      |                                     |
| 25.          | Defendants       | Applications for Special Leases Nos. 1614 and 1625 and letters from the Mines Department              |                                     |



CITATION

ELIZABETH R.

TO The Within named Defendants

ASSOCIATED MINERALS CONSOLIDATED LIMITED and  
WYONG ALLUVIALS PTY. LIMITED

GREETING:

WE command you that within eight (8) days after the service hereof on you, exclusive of the day of such service, you cause an Appearance to be entered for you in the Equity Office of our Supreme Court, Elizabeth Street, Sydney in the State of New South Wales to the within Statement of Claim and that you do at the same time of entering your Appearance file in the said Equity Office a memorandum stating in effect that you do dispute, in whole or in part, the Plaintiff's claim (specifying which part) or that you submit to such decree or order as the Court thinks fit to make or that you disclaim all right, title and interest in the subject matter of the within Statement of Claim. 10

WITNESS: The Honourable Charles McLelland,  
Chief Judge in Equity at Sydney the 23rd day  
of December, 1971 and in the twentieth year  
of Our Reign. 20

David J. Nicholas (L.S.)  
for Chief Clerk in Equity

NOTE: If you neglect to enter your Appearance, or to file a memorandum as above menticked, you will be subject to such order as the Court thinks fit to make in your absence. 30

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
IN EQUITY

No. 2083 of 1971

BETWEEN:

WYONG SHIRE COUNCIL

Plaintiff

AND:

ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED

10

Defendants

STATEMENT OF CLAIM

1. \_\_\_\_\_ The Plaintiff is a body corporate entitled to sue in and by its said name and style.

2. \_\_\_\_\_ The Defendants are each duly incorporated and liable to be sued in and by their said names and styles.

3. \_\_\_\_\_ There is situate within the Shire of Wyong certain land (hereinafter called 'the subject land') known as Portions 44, 51, 48 and 42 Parish of Wallarah, County of Northumberland.

20

4. \_\_\_\_\_ On the 6th day of January, 1961 there was notified in the Government Gazette a direction by the Minister for Local Government to the Plaintiff to prepare a Town and Country Planning Scheme with respect to all land in the Shire of Wyong pursuant whereto Division 7 of Part XIIIA of the Local Government Act 1919, as amended, came into operation as from such date within the said Shire.

Statement of Claim

5. On the third day of May, 1968 the Shire of Wyong Planning Scheme Ordinance was prescribed.

6. Pursuant to the said Ordinance the whole of the subject land was zoned 'Open Space - Recreation' save for part of Portion 44 which was zoned 'Non-Urban A' and a further part of the said Portion which was zoned 'Residential A' pursuant to the said Ordinance.

7. Between the 6th day of January, 1961 and the present date no consent has ever been granted by the Plaintiff, whether under the Town and Country Planning - General Interim Development Ordinance or the Shire of Wyong Planning Scheme Ordinance in favour of any person permitting the use of the subject land, or any part of it, for the mining of any materials or for the making of any roads, the construction of any pipeline, or power line, the construction of any pump station or the construction of any levee bank upon the subject land or any part thereof. 10 20

8. On or about the 27th day of February, 1967 Special Lease 369, relating to Portion 44, was granted to the first named Defendant pursuant to the Mining Act 1906 as amended. The term of the said lease was for five (5) years from the date of grant.

9. On or about the 29th day of August, 1962 Special Lease 202 was granted to Messrs. A.A. Brown and N.E. Penman, as Nominees for the second named Defendant, pursuant to the Mining Act 1906 as amended

Statement of Claim

and relating to the land within Portion 51. The said lease was granted for a term of five (5) years from such date. On or about the 24th day of April, 1964 the said Lessees transferred their interest in the said lease to the second named Defendant.

The second named Defendant has sought a renewal of the said lease for a further term.

10. On or about the 14th day of June, 1961 Special Lease 176 was granted to Messrs. A.A. Brown and R.R. Nash, Nominees for the second named Defendant, pursuant to the Mining Act 1906 as amended and relating to the land within Portion 48. The said Lease was granted for a term of five (5) years from such date. On or about the 14th day of January, 1963 the said Lessees transferred their interest in the said lease to the second named Defendant. The said lease was renewed for a further five (5) years expiring on the 14th day of June, 1971. Application for a further renewal of the said lease has been made by the second named Defendant.

11. On or about the 3rd day of May, 1961 Special Lease 175 was granted to Messrs. A.A. Brown and R. R. Nash, Nominees for the second named Defendant, pursuant to the Mining Act 1906 as amended and relating to the land within Portion 42. The said lease was granted for a term of five (5) years from such date. On or about the 14th day of January, 1963 the said Lessees transferred their interest in the said

Statement of Claim

Lease to the second named Defendant. The said Lease was renewed for a further five (5) years expiring on the 3rd day of May, 1971. Application for a further renewal of the said Lease has been made by the second named Defendant.

12. The Defendants are the owners of a certain mining dredge situate upon Portion 48 and the Defendants are currently operating such mining dredge for the purpose of winning rutile, zircon and associated minerals. The Plaintiff charges and the fact is that the Defendants will, unless restrained by this Honourable Court, continue to carry on such mining operations upon the subject land. 10

13. The Defendants are the Operators of a second mining dredge situate upon Portion 44 which said dredge is ready for operation for the purpose of winning rutile, zircon and associated minerals upon the subject land. The Plaintiff charges and the fact is that, unless restrained by this Honourable Court, the Defendants will commence to operate the said dredge for such mining purposes. 20

14. There are presently growing upon most of the subject land substantial and attractive trees.

15. The Plaintiff charges and the fact is that mining operations for the purpose of winning rutile, zircon and associated minerals necessarily and inevitably destroys all existing vegetation upon the land mined.

Statement of Claim

16. On the 22nd day of July, 1971 the Plaintiff resolved in terms following:

"RESOLVED

That the Council immediately place a Tree Preservation Order on the whole of the red gum forest at The Entrance North West of Wilfred Barrett Drive and contained within the boundaries of ML.44 and ML.51."

17. Within portions 44 and 51 and lying west of Wilfred Barrett Drive and east of Tuggerah Lake is a substantial Angophora (red gum) forest. 10

18. On the 9th day of December, 1971 the Plaintiff resolved in terms following:

"RESOLVED

That Council being of the opinion that it is expedient in the interests of amenity to make provision for the preservation of trees pursuant to Clause 44 of the Shire of Wyong Planning Scheme Ordinance HEREBY PROHIBITS the ringbarking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree within the Shire of Wyong except with the consent of the Council." 20

19. Since the said resolution the Plaintiff has given no consent to the ringbarking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree upon the subject land.

20. The Plaintiff charges and the fact is that

Statement of Claim

unless restrained by this Honourable Court the Defendants will cut down, remove, injure and wilfully destroy trees upon the subject land without the consent of the Plaintiff.

21. The Plaintiff charges and the fact is that the Defendants will unless restrained by Order of this Honourable Court use the subject land for the purpose of making roads and of constructing pipelines and powerlines, pump stations and levee banks without the prior consent of the Plaintiff. 10

THE PLAINTIFF THEREFORE CLAIMS:

1. That it may be declared that the use of the land contained in Portion Nos. 44, 51, 48 or 42 Parish of Wallarah, County of Northumberland or any part thereof for the purpose of the mining of rutile, zircon or associated or similar minerals or for the purposes of making any roads or of constructing any pipelines or powerlines or of constructing any pump station or of constructing any levee bank thereon without the prior consent of the Plaintiff is in breach of the Shire of Wyong Planning Scheme Ordinance and illegal. 20

2. That it may be declared that the ringbarking, cutting down, topping, lopping, removing, injuring or wilful destruction of any trees upon the land contained in Portion Nos. 44, 51, 48 or 42 Parish of Wallarah, County of Northumberland or any part thereof without the prior consent of the Plaintiff

Statement of Claim

is in breach of the Shire of Wyong Planning Scheme Ordinance and illegal.

3. That the Defendants and each of them their servants and agents may be restrained from using or permitting the use of the land contained in Portion Nos. 44, 51, 48 or 42 Parish of Wallarah, County of Northumberland or any part thereof for the purpose of the mining of rutile, zircon or associated or similar minerals or for the purpose of making any road or of constructing any pipeline or powerline or of constructing any pump station or of constructing any levee bank thereon without the prior consent of the Plaintiff.

10

4. That the Defendants and each of them their servants and agents may be restrained from ringbarking, cutting down, topping, lopping, removing, injuring or wilfully destroying any trees upon the land contained in Portion Nos. 44, 51, 48 or 42 Parish of Wallarah, County of Northumberland or any part thereof without the prior consent of the Plaintiff.

20

5. That the Defendants may be ordered to pay the costs of the Plaintiff of this suit.

6. Such further or other relief as the nature of the case may require.

Murray Willcox  
Counsel for the Plaintiff.

NOTE: This Statement of Claim is filed by Messrs.



Statement of Claim

S.C. Taperell, Rutledge & Fennell of Suite 9, Civic  
Centre Arcade, The Entrance Road, The Entrance  
Solicitors for the Council of the Shire of Wyong the  
abovenamed Plaintiff whose address for service is  
c/o Messrs. Marsh, Harvey & Cropper, Solicitors, 53  
Martin Place, Sydney.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
IN EQUITY

No. 2083 of 1971

BETWEEN:

WYONG SHIRE COUNCIL

Plaintiff

AND:

ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED

10

Defendants

STATEMENT OF DEFENCE

The abovenamed Defendants ASSOCIATED MINERALS  
CONSOLIDATED LIMITED and WYONG ALLUVIALS PTY.  
LIMITED under their respective Common Seals say as  
follows:-

1. In answer to paragraph 4 of the Statement of  
Claim the Defendants -

- (a) do not know and cannot admit that there was  
any direction by the Minister for Local  
Government to the Plaintiff as alleged; 20
- (b) do not know and cannot admit that, if there  
was any such direction, it was notified in  
the Government Gazette on 6th January 1961  
or at all; and
- (c) do not know and cannot admit that Division 7  
of Part XIIIA of the Local Government Act 1919  
as amended came into operation within the  
Shire of Wyong as from 6th January 1961 or  
at all. 30

Statement of Defence

2. In answer to paragraphs 5, 6 and 7 of the Statement of Claim the Defendants do not know and cannot admit that the alleged Shire of Wyong Planning Scheme Ordinance was prescribed on 3rd May 1968 or at all, or in particular that the provisions contained in Division 2 of Part XIIIA of the said Act were complied with in respect of the alleged Scheme.

3. In answer to paragraph 14 of the Statement of Claim the Defendants admit that there are presently growing upon some of the subject land some substantial and attractive trees. Save as aforesaid the Defendants do not know and cannot admit any of the allegations in the said paragraph 14. 10

4. In answer to paragraph 16 of the Statement of Claim the Defendants do not know and cannot admit that on 22nd July 1971 the Plaintiff resolved in the terms therein set forth.

5. In answer to paragraph 17 of the Statement of Claim the Defendants admit that within Portions 44 and 51 and lying west of Wilfred Barrett Drive and east of Tuggarah Lake are some Angophora (red gum) trees. Save as aforesaid the defendants do not know and cannot admit any of the allegations in the said paragraph 17. 20

6. In answer to paragraph 18 of the Statement of Claim the Defendants do not know and cannot admit that on 9th December 1971 the Plaintiff resolved in the terms therein set forth.

Statement of Defence

7. In further answer to paragraphs 16 and 18 of the Statement of Claim the Defendants say that if the alleged Ordinance is valid and the alleged Scheme has been duly prescribed (which matters are not admitted) -

- (a) Clause 44 thereof is invalid by reason that its inclusion in a scheme is ultra vires the powers conferred on the Governor by Section 342KD (1) of the Local Government Act 1919 as amended; 10
- (b) Neither of the said alleged Resolutions of 22nd July 1971 and 9th December 1971 respectively complied with the requirements of the said Clause 44;
- (c) If either of the said alleged Resolutions did comply with the requirements of the said Clause 44 (which is denied) its direct effect was to deprive the Defendants and each of them of valuable proprietary rights and it 20 was passed by the Plaintiff without any opportunity having been given to the Defendants or either of them to be heard in opposition or in relation thereto, and in breach of the principles of natural justice by which the Plaintiff was bound in exercising its powers under the said Clause 44, whereby it is void and unenforceable as against the Defendants or either of them;

Statement of Defence

(d) If the said alleged Resolution of 9th December 1971 complied with the requirements of the said Clause 44 (which is denied) it was passed by the Plaintiff for a purpose other than that for which the powers conferred by the said Clause 44 were conferred on the Plaintiff, namely to prevent the Defendants and each of them from conducting mining operations upon the subject land;  
and

10

(e) If either of the said alleged Resolutions complied with the requirements of the said Clause 44 (which is denied) it was inconsistent with the provisions of the Mining Act 1906 (as amended) and the Regulations made thereunder and the leases granted thereunder as hereinafter mentioned and was thereby invalid.

8. On 3rd May 1961 in pursuance of Section 40 of the Mining Act 1906 (as amended) the Governor duly granted to Aubrey Arthur Brown and Ronald Roy Nash a Special Mining Lease of the land referred to in the Statement of Claim as Portion 42 (referred to in the said lease as ML 42) for the term of five years then next ensuing. The said lease was duly registered under the provisions of the said Act as

20

Statement of Defence

No. 175 and the Defendants seek leave to refer thereto when produced as if the same were fully set forth herein. The said Aubrey Arthur Brown and Ronald Roy Nash duly transferred their interest in the said lease to the second named Defendant which transfer was duly registered under the provisions of the said Act on 14th January 1963. On or about the 22nd December 1966 the said lease was with the consent of the Governor duly renewed pursuant to Section 38 of the said Act for a further term until 3rd May 1971. The said renewal was duly registered under the provisions of the said Act and the Defendants seek leave to refer thereto when produced as if the same were fully set forth herein. During the last year of the term of the said renewal the second named Defendant duly made application for the further renewal of the said lease pursuant to Section 38 of the said Act which said application has not been granted or refused.

10

20

9. On 14th June 1961 in pursuance of Section 40 of the Mining Act 1906 (as amended) the Governor duly granted to Aubrey Arthur Brown and Ronald Roy Nash a Special Mining Lease of the land referred to in the Statement of Claim as Portion 48 (referred

Statement of Defence

to in the said Lease as ML 48) for the term of five years then next ensuing. The said Lease was duly registered under the provisions of the said Act as No. 176 and the Defendants seek leave to refer thereto when produced as if the same were fully set forth herein. The said Aubrey Arthur Brown and Ronald Roy Nash duly transferred their interest in the said Lease to the second named Defendant which transfer was duly registered under the provisions of the said Act on 14th January 1963. On or about the 22nd December 1966 the said Lease was with the consent of the Governor duly renewed pursuant to Section 38 of the said Act for a further term until 14th June 1971. The said renewal was duly registered under the provisions of the said Act and the Defendants seek leave to refer thereto when produced as if the same were fully set forth herein. During the last year of the said renewal the second named Defendant's application for the further renewal of the said Lease pursuant to Section 38 of the said Act has not been granted.

10

20

10. On 29th August 1962 in pursuance of Section 40 of the Mining Act 1906 (as amended) the Governor duly granted to Aubrey Arthur Brown and Neville Edward Penman a Special Mining Lease of the land referred to in the Statement of Claim as Portion 51

Statement of Defence

(referred to in the said Lease as ML 51) for the term of five years then next ensuing. The said Lease was duly registered under the provisions of the said Act as No. 202 and the Defendants seek leave to refer thereto when produced as if the same were fully set forth herein. The said Aubrey Arthur Brown and Neville Edward Penman duly transferred their interest in the said Lease to the second named Defendant which transfer was duly registered under the provisions of the said Act on 24th April 1964. During the last year of the term of the said Lease the second named Defendant duly made application for the renewal of the said Lease pursuant to Section 38 of the said Act which said application has not been granted or refused.

10

11. On 22nd February 1967 in pursuance of Section 40 of the Mining Act 1906 (as amended) the Governor duly granted to the first named Defendant a Special Mining Lease of the land referred to in the Statement of Claim as Portion 44 (referred to in the said Lease as ML 44) for the term of five years then next ensuing. The said lease was duly registered under the provisions of the said Act as No. 369 and the Defendants seek leave to refer thereto when produced as if the same were fully set forth herein. The first named Defendant has since 23rd February 1971 duly made application for the renewal of the

20



Statement of Defence

said lease pursuant to Section 38 of the said Act which said application has not been granted or refused.

12. On 25th June 1963 the Minister for Mines pursuant to Section 118 of the Mining Act 1906 (as amended) duly authorised the amalgamation of inter alia the abovementioned Leases registered Nos. 175 and 176.

13. On 15th March 1965 the said Minister pursuant to Section 118 of the Mining Act 1906 (as amended) duly authorised the amalgamation of inter alia the abovementioned leases registered Nos. 175, 176 and 202. 10

14. On 11th June 1969 the said Minister pursuant to Section 118 of the Mining Act 1906 (as amended) duly authorised the amalgamation of inter alia the abovementioned Leases registered Nos. 175, 176, 202 and 369.

15. In answer to paragraphs 12, 13, 20 and 21 of the Statement of Claim the Defendants deny that they are doing or will do any of the things therein set forth otherwise than in pursuance of the powers conferred and obligations imposed on them respectively by reason of the matters referred to in paragraphs 8 to 14 hereof inclusive and by the provisions of the Mining Act 1906 (as amended) and the Regulations made thereunder. 20

16. In further answer to paragraphs 12, 13, 20

Statement of Defence

and 21 of the Statement of Claim, if the abovementioned alleged Ordinance is valid and the abovementioned alleged Scheme has been duly prescribed (which matters are not admitted) the Defendants deny that they are doing or will do any of the things set forth in the said paragraphs otherwise than in the carrying out by them or either of them as the owners or lessees or owner or lessee as the case may be of a mine, of development required for the purposes of the mine within the meaning of paragraph 6 of Schedule 6 to the said alleged Ordinance subject to the exceptions set forth in the said paragraph 6.

10

17. In further answer to paragraphs 12, 13, 20 and 21 of the Statement of Claim, if the abovementioned alleged Ordinance is valid and the abovementioned alleged Scheme has been duly prescribed (which matters are not admitted) the Defendants say that the use of the subject land and of any of the abovementioned Portions thereof for the purpose of mining for zircon, rutile, ilmenite or monazite or for purposes ancillary thereto is a continuance of "an existing use of land" within the meaning of Clause 14 of the said alleged Ordinance.

20

18. In further answer to paragraphs 12, 13, 20 and 21 of the Statement of Claim, if the abovementioned alleged Ordinance is valid and the abovementioned alleged Scheme has been duly prescribed (which matters are not admitted) the Defendants say

Statement of Defence

that the use of the subject land and any of the abovementioned Portions thereof for the purpose of mining thereon for zircon, rutile, ilmenite or monazite or for purposes ancillary thereto is the maintaining of "an existing work" within the meaning of Clause 14 of the said alleged Ordinance.

19. In further answer to paragraphs 12, 13, 20 and 21 of the Statement of Claim, if the abovementioned alleged Ordinance is valid and the abovementioned alleged Scheme has been duly prescribed (which matters are not admitted) the Defendants deny that they are doing or will do any of the things set forth in the said paragraphs otherwise than in the use of the said land or any of the abovementioned Portions thereof for the purpose of mining thereon for zircon, rutile, ilmenite or monazite or for purposes ancillary thereto. 10

20. In answer to the whole of the Statement of Claim the Defendants say that the Plaintiff has been guilty of laches acquiescence and delay whereby it is precluded from obtaining declaratory or equitable relief herein. 20

21. In further answer to the whole of the Statement of Claim the Defendants say that the matters alleged in the Statement of Claim would not if established entitle the Plaintiff to declaratory or equitable or any relief and the Defendants seek the

Statement of Defence

same benefit from this Defence as if they had plead-  
ed or demurred to the Statement of Claim.

M.H. McLELLAND  
.....  
Counsel for the Defendants

THE COMMON SEAL of ASSOCIATED  
MINERALS CONSOLIDATED LIMITED  
was hereunto affixed on the  
tenth day of January, 1972  
in the presence of:

)  
)  
)  
)  
)

Directors

Secretary

10

THE COMMON SEAL of WYONG  
ALLUVIALS PTY. LIMITED was  
hereunto affixed on the tenth  
day of January, 1972 in the  
presence of:

)  
)  
)  
)  
)

Director

Secretary

NOTE: This Statement of Defence is filed by  
Messieurs Robson Cowlshaw & Macready of 34  
Hunter Street Sydney the solicitors for the  
abovenamed Defendants.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
IN EQUITY

No. 2083 of 1971

BETWEEN:

WYONG SHIRE COUNCIL

Plaintiff

AND:

ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED

10

Defendants

REPLICATION

1. In reply to Paragraph 7 (c) of the Statement of Defence the Plaintiff does not know and cannot admit that the direct effect of the Resolutions therein referred to was to deprive the Defendants and each of them of valuable proprietary rights.

2. In further reply to Paragraph 7 (c) of the Statement of Defence the Plaintiff denies that the said Resolutions were passed without any opportunity having been given to the Defendants to be heard in opposition or in relation thereto.

20

3. In reply to Paragraph 7 (d) of the Statement of Defence the Plaintiff denies that the said Resolution was passed by the Plaintiff for a purpose other than that for which the powers conferred by the said Clause 44 were conferred on the Plaintiff.

4. In reply to the whole of Paragraph 7 of the Statement of Defence the Plaintiff submits that the matters therein alleged would if established afford

30

Replication

no defence to the matters alleged in the Statement of Claim and the Plaintiff seeks the same benefit from this Reply as if it had demurred to such paragraph.

5. In reply to the matters set out in Paragraphs 8, 9, 10, 11, 12, 13, 14 and 15 of the Statement of Defence the Plaintiff submits that such matters afford no defence to the matters alleged in the Statement of Claim and the Plaintiff seeks the same benefit from this Reply as if it had demurred to such paragraphs.

10

6. In reply to Paragraph 16 of the Statement of Defence the Plaintiff denies that the things set forth in Paragraphs 12, 13, 20 and 21 of the Statement of Claim are and will be done by the Defendants as the owners or Lessees or the Owner or Lessee of a mine of development required for the purposes of the mine within the meaning of Paragraph 6 of the Schedule to the said Ordinance.

20

7. In reply to Paragraph 17 of the Statement of Defence the Plaintiff denies that the use of the subject land and of the said Portions for the purpose of mining for zircon, rutile, ilmenite or monazite or for purposes ancillary thereto is a continuance of "an existing use of land" within the meaning of Clause 14 of the said Ordinance.

8. In reply to Paragraph 18 of the Statement of Defence the Plaintiff denies that the use of the

Replication

subject land and of the said Portions for the purpose of mining for zircon, rutile, ilmenite or monazite or for the purposes ancillary thereto is a maintaining of "an existing use of land" within the meaning of Clause 14 of the said Ordinance.

9. In reply to Paragraph 20 of the Statement of Defence the Plaintiff denies that it has been guilty of laches acquiescence and delay whereby it is precluded from obtaining declaratory or equitable relief herein.

10

10. Save as aforesaid and except to the extent that the same contains admissions the Plaintiff joins issue with the Defendants upon their Statement of Defence.

Murray Willcox  
.....  
Counsel for the Plaintiff.

NOTE: This Replication is filed by Messrs. S.C. Taperell, Rutledge & Fennell of Suite 9, Civic Centre Arcade, The Entrance Road, The Entrance for the Council of the Shire of Wyong the abovenamed Plaintiff whose address for service is c/o Messrs. Marsh, Harvey & Cropper, Solicitors, 53 Martin Place, Sydney.

20

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
IN EQUITY

No. 2083 of 1971

BETWEEN:

WYONG SHIRE COUNCIL

Plaintiff

AND:

ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED

10

Defendants

REJOINDER

Save for admissions (if any) therein contained the Defendants join issue with the Plaintiff upon its replication.

M.H. McLelland

Counsel for the Defendants

NOTE: This Rejoinder is filed by Messrs. Robson Cowlshaw & Macready of 34 Hunter Street, Sydney, the Solicitors for the Defendants

20



IN THE SUPREME COURT

OF NEW SOUTH WALES

IN EQUITY

No. 2083 of 1971

CORAM: HOPE J.  
MONDAY, 21ST FEBRUARY, 1972.

WYONG SHIRE COUNCIL v. ASSOCIATED MINERALS  
CONSOLIDATED LIMITED & ANOR.

MR. WILCOX appeared for the plaintiff.  
MR. MILNE, Q.C. and MR. McLELLAND appeared for the  
Defendants.

10

-----

MR. MILNE: I call an officer of the Mines Department on subpoena duces tecum.

(Mr. Roy Raymond Merrick, an officer of the Department of Mines, produced a subpoena served on him by the plaintiff in this action, together with some of the documents in the subpoena.)

HIS HONOUR: Mr. Merrick, are the others not available because you cannot find them, or do you claim privilege?

20

MR. MERRICK: No privilege is claimed, your Honour. The documents not available are those mentioned in pars. 1(a), 3(a), 4(a), 4(b), 4(c), 4(d), 5(a).

MR. MILNE: Are those documents not produced because they cannot be found?

MR. MERRICK: If we look further it is possible we may come across them.

HIS HONOUR: Would you ask the appropriate officer to make that search, and if the documents are found will you have somebody come to Court? For that purpose do you have a copy of the subpoena?

30

MR. MERRICK: Yes, your Honour.

HIS HONOUR: Apparently it is of quite some importance in the case to get the documents listed. When you go, I wonder if you would see if some steps could be taken for another search?

MR. MERRICK: Yes, your Honour.

(In relation to paragraph 4 of Statement of Claim, letter from the Under-Secretary,

Department of Local Government, to Shire Clerk dated 6th January, 1961, together with a Minister's direction under s. 342D of that date, tendered and marked Exhibit "A".)

HIS HONOUR: I note that it is admitted by the plaintiff that the letter and the direction were received by the plaintiff on 9th January, 1961.

(Copy of Extract from Government Gazette No. 1 dated 6th January, 1961 tendered and marked Exhibit "B".)

10

(Government Printer's copy of the Shire of Wyong Planning Scheme Ordinance tendered and marked Exhibit "C".)

(Certified copy of the resolution referred to in paragraph 16 of the Statement of Claim, being a resolution dated 22nd July, 1971, tendered and marked Exhibit "D".)

(Certified copy of resolution of the plaintiff made on 9th December, 1971, being the resolution referred to in paragraph 18 of the Statement of Claim tendered and marked Exhibit "E".)

20

(Case for Plaintiff closed.)

CASE FOR DEFENDANTS:

MR. MILNE: I call on subpoena duces tecum the Commissioner of Corporate Affairs - (no appearance).

I call on subpoena duces tecum the Shire Clerk of Wyong Shire Council.

MR. WILCOX: Mr. Golding is in Court, but he tells me that he has never received a subpoena. But copies of the documents are here.

30

MR. MILNE: For the purposes of my case, it is imperative that I look at, before I commence, the files from the Mining Department. I also mention that all the witnesses I have were on a 'plane from Brisbane at 7 a.m. today, and nobody has yet arrived.

(Short adjournment.)

AT 2 P.M.:

(Further hearing adjourned until 10 a.m. on Tuesday, 22nd February, 1972, to enable photostat copies of documents to be made.)

40

CORAM: HOPE, J.

WYONG SHIRE COUNCIL v. ASSOCIATED MINERALS  
CONSOLIDATED LIMITED & ANOR.

SECOND DAY: TUESDAY, 22ND FEBRUARY, 1972.

MR. MILNE: May I draw attention to one matter in the pleadings. Paragraph 4 of the Statement of Claim asserts that on 6th January 1961 there was a notification in the Gazette of a direction by the Minister to the Council to prepare a planning scheme. Your Honour will recollect that the section at that time required not only a notification in the Gazette but a notification in a newspaper circulating in the district. The statement of defence in paragraph 1 (b) puts in issue paragraph 4 or at all, and paragraph 1(c) and 2. It may have been by an oversight. I want to make it clear that we will be relying upon that.

10

JOSEPH PINTER

Sworn, examined, deposed:

20

TO MR. MILNE: My full name is Joseph Pinter. I live at 13, First Avenue, Surfer's Paradise, on the Golf Coast in Queensland.

Q. I think your occupation is that of a company director, is it not? A. Yes, I am the Managing Director of a company.

Q. For how long have you been associated or connected with the firstnamed defendant in this case, that is to say, Associated Minerals Consolidated Limited? A. I have been connected with the company since its inception, which dated back to 1947 when it was a private company.

30

Q. And I think you were a substantial, if not the sole shareholder, were you not? A. I was a substantial shareholder.

Q. You are still the Managing Director of that company? A. Yes.

Q. For how long have you been associated with the secondnamed defendant, Wyong Alluvials?

A. Since Associated Minerals acquired that company.

40

Q. When was that? A. That was in 1967, I think.

Q. Is Associated Minerals Consolidated Limited now a subsidiary of Goldfields of Australia?

A. Yes, it is a subsidiary of Consolidated Goldfields of Australia.

Q. When did that take place? A. That happened in 1961 when they took the majority interest.

Q. In the years of the 50's prior to the Association with Wyong Alluvials or with Goldfields, did your company operate and mine a number of leaseholds right from the southern part of Queensland into New South Wales? A. Prior to 1961?

10

Q. Yes. A. The history of the development companies is one that shows a degree of desire to expand and build up. Whilst the company first started as a small unit in 1947 as a private company, it had the desire of acquiring more reserves, minable reserves, and believing that this is a profitable and worthwhile occupation activity that has a future, we were continuously aiming at building it up.

Q. For that purpose did you send your members of your company into the Wyong area? A. We have, among other places, tested many areas along the coast of New South Wales and Queensland over the years. One of them was the Wyong area.

20

Q. I think you went into the Wyong area initially to investigate it somewhere during the 50's?  
A. Yes, it was the mid 50's.

Q. I do not want you to go into the details of this, but ultimately I think your company, that is to say, Associated Minerals Consolidated Limited, obtained the rights over an area of land called ML.44? A. That is so.

30

Q. Prior to acquiring it, and again I do not want you to go to details about it, but did you do work on it to establish what was there? A. Oh yes, we tested the area thoroughly so that we were satisfied that mineral is there, and we then accepted the - exercised our option that we had with the vendors.

(Plan showing ML. 42, 44, 48 and 51 - such document which was formerly in an affidavit of Mr. Mackellar and which was Exhibit 1 - tendered and marked Exhibit 1.)

40

Q. Do you recollect what you paid, or your company paid to the vendors for that interest?  
(Objected to; allowed.)

Q. Do you recollect what price was paid to the

vendors for ML. 44? A. I am afraid I do not recollect the exact figure. I think it was in the order of £10,000, but I am not sure of that.

Q. Before paying that money and doing the work that you told us was done, did you give any consideration to whether or not it was an area that you could mine? A. Yes, after the work done in the field was analysed by our management, we came to the conclusion that the area has sufficient mineral to warrant it being acquired. I think there was a dredge path worked out, that gave it a reserve well over 150,000 tons of rutile of a grade approximately .4 rutile in the ground. This is only from memory, and this appeared to us as a worthwhile possession for mining eventually. 10

HIS HONOUR: Q. I do not quite understand what you mean when you say "a dredge path was worked out". Does that mean a test was taken along a particular line, or what? A. What I mean is that you can select certain areas and let the dredge travel along that predetermined area, which is a dredge path which will allow the dredge to mine a predetermined grade that you know it will mine, and you might leave areas unmined if they are too big for economic reasons. 20

Q. The dredge path was simply what was regarded as an economic area in ML.44 to mine? A. That is so.

MR. MILNE: Q. After the purchase of ML.44 an application was made for a lease? A. Yes. 30

Q. Later on the lease was granted? A. Yes.

Q. Later on I think you paid the rent on the lease to the Crown, and rates to the Council and similar outgoings? A. Yes.

Q. Did your company ever have any intention of abandoning ML.44? A. Oh no, we considered it to be a valuable asset.

Q. Your company, I take it, each year puts out a balance sheet? A. Yes. 40

Q. Does it show in those balance sheets the reserve that you have? A. Yes, the reserve has a value in the balance sheet.

HIS HONOUR: Q. Mineral reserves? A. Yes, mineral reserves.

MR. MILNE: Q. Was ML.44 one of those that appeared in your balance sheets? A. By necessity, being a property of the company, it is part of the balance sheet.

Q. You have told us that the association with Wyong commenced in what year? A. The association with Wyong commenced in the 50's. We started acting for them as their distribution channel. We did the marketing and later on we acquired the shareholding of Wyong when it became a subsidiary of Associated Minerals. 10

Q. Included among the things Wyong owned were ML.42, 48 and 51? A. Yes.

HIS HONOUR: I do not know whether the statement that I have made in my judgment in the interlocutory proceedings was right or not, but in respect of Mining Lease 44 I said that the application for the lease was made on 30th November 1956 and the lease was granted on 22nd February 1967. Was there any particular reason for that delay? 20

MR. MILNE: The evidence will show that it took the Mines Department something like ten to twelve years to grant each lease.

HIS HONOUR: Q. Do you know of any reason why it took that long? A. I do not know why it took that long. I know that the Mines Department during that period was snowed-under with many, many applications. This was the mid 50's.

Q. It had nothing to do with your company? 30  
A. No.

MR. MILNE: Q. You told us that you acquired the three southern leases, 51, 48 and 42? A. With Wyong.

Q. And that was in 1961, was it? A. We acquired Wyong Minerals later in the 60's, because I think it was 1967, not so long ago.

Q. Since you acquired the interest in Wyong Minerals, has it continued to pay rates, rent and so forth on those three southern leases? A. Yes. 40

HIS HONOUR: When you refer to Wyong Minerals, do you mean Wyong Alluvials?

MR. MILNE: I am sorry - A. I refer to Wyong Minerals. That was the public company that we have acquired, Wyong Alluvials being a subsidiary of that company.

HIS HONOUR: I know there were two companies, so you might as well be accurate about it.

MR. MILNE: I think the lessee is Wyong Alluvials.

Q. From 1967 on, has there ever been any intention in yourself or your Board to abandon or to give up those leases? A. Oh no, we considered those leases valuable additions to the reserves of the group now, to be mined together, with ML.44. This was one of the attractions of joining the two companies together.

10

Q. I want to take you to this - at some point of time after you had at least ML.44 in your possession, did your company have the equipment to be able to operate it? A. When we first acquired ML.44 which was in 1956 or 1957 I think, the area there was considered to be somewhat lower in grade to be suitable to be mined by the equipment that we then possessed, but the development of the industry, and the technical development of the industry was such that we were quite convinced that by the time we want to mine it, the suitable equipment will be available. The criterion there is not only the equipment but the price of the commodity.

20

Q. There were two things - the techniques you were using and the price you were getting from the commodity? A. Yes.

HIS HONOUR: Q. Do I understand that when you first applied for the lease in 1956, at that stage price and equipment combined together made it at that point of time not a suitable area to mine, but you expected that in due course it would become a suitable area? A. Equipment and size of equipment comes into the economies of activities like that, and the type of equipment that can do the job. We at the time we acquired it had no equipment of the size suitable for economic mining, but we were building plants at that stage, and planning plants that would be suitable for it eventually. This is the historical development of the industry. The richer areas were mined earlier in the life of the industry and in the life of my company, and as time progressed and the quantities of mineral required were greater and greater, we were forced to mine lower and lower grade areas, and utilised larger and more sophisticated plants as time went on. Eventually the type of plants that are utilized today are not comparable with the type of plants which were utilized in the early 50's.

30

40

MR. MILNE: Q. Having got this area in Wyong,

50

ML. 44, you tell us that you never had the appropriate equipment then to mine? A. We had no equipment at that stage to mine that area, but we had the knowledge that such equipment can be built.

HIS HONOUR: Q. May I enquire what time you are talking about? On the information that I refer to in that interlocutory judgment, 44 was applied for on 30th November, 1956 and was granted on 22nd February 1967. Are you referring to either of those points of time, or to another time? A. The crucial time was when the decision was made to in fact acquire the lease and pay the money for it, and that is in 1956 or 1957. 10

MR. MILNE: I think we should be accurate about this. The application itself is not dated, but it was received in the Warden's office on 30th November, 1956.

Q. Did your company decide to do something about that equipment? A. During the period we have been - to explain this a bit, if I may - during that period the company has been mining in the Cudgeon area in northern New South Wales. That is very close to the Queensland border, and the concentrates parted from there across the border to Southport for treatment, and this was the main source of our mineral. In that area we were gradually developing equipment that was capable of dredging and mining with a larger increase, so that it gradually was able to mine lower and lower grades economically. First these plants were skid-mounted, with small dredges feeding them. Later on when we installed these skid-mounted plants on pontoons so that they became floating, concentrating plants followed the dredges. Later on we built larger dredges and larger plants to treat them. So we were well on the way in developing plants that were capable of larger and economic concentration of lower grades. 20 30

Q. Did you do anything particularly about getting equipment made so you could mine the Wyong area? A. At that stage? 40

Q. Yes. A. Not in 1957.

Q. When did you do it, if you did it?

HIS HONOUR: Are you talking about special equipment for the Wyong area?

MR. MILNE: Q. Yes. A. We knew that Wyong will be one of those large sand masses of low grade mineralization. We later on acquired - we also had



another one of that type at South Stradbroke Island. We had a similar one in Morton. We had a similar sand mass near Laurieton. So it was as late as 1965 or 1966 that we designed our really large plant of 1,000 cu. yards an hour. That was designed ....

HIS HONOUR: Q. Is that a dredge? A. A dredge and concentrating plant. It is a dredge that floats. It had the concentrating plant, and it is linked with the concentrating plant by a pipeline. This was to cost 1.6 million I think, and its programme was to first go to South Stradbroke Island, then to Morton Island, then to Laurieton, and I think to another New South Wales spot, and finish at Toukley. A total of 14 years, a programme of 14 years, to warrant the large capital expenditure.

10

Q. You refer to the subject sites as the area which include the areas ML.44 as Toukley? A. Yes.

Q. There is another area up there, Lake Munmorah. Do you call that Toukley, too? A. No, we refer to 44 as Toukley.

20

MR. MILNE: Q. Where is that dredge now? A. By the time the dredge was built it was 50% larger, and it cost 3.4 million, and it went into South Stradbroke Island as originally designed, but whilst it was at South Stradbroke Island the opportunity arose for the company to acquire another mining outfit, and this was Titanium and Zirconium Industries on North Stradbroke Island, so we had to completely alter our plans.

30

HIS HONOUR: Q. When was this? A. This was in 1969, I think. This large concentrating plant commenced on South Stradbroke Island in 1968, and then we acquired Titanium and Zirconium Industries in 1969, and we had to change the forward plan for this large unit, and it finished its operations on South Stradbroke Island in 1970, and instead of dismantling it and taking it across piecemeal to Morton Island, as we originally planned, we were able to float the plant as it was through Morton Bay into North Stradbroke Island.

40

MR. MILNE: Q. I want you to direct your mind to where it is now? A. In North Stradbroke Island.

Q. Where did the two plants that are in Wyong now come from? A. The plant that is at the southern end of the peninsular came from Byron Bay. It was completely dismantled and relocated there. It cost us \$100,000 to do it.

HIS HONOUR: Q. Do you know when it did come from Byron Bay to the southern end of the peninsular?

A. It was installed there in 1970, I think.

Q. That is a dredge and concentrating plant?

A. Yes.

Q. Is the concentrating plant mobile too?

A. It floats. The concentrating plant floats with the dredge. The dredge digs into the front face of the dredge pont. It pumps the sand with the mineral in it with a pipeline onto the floating concentrating plant. The function of the floating concentrating plant is to remove the mineral contents and send it out to shore, and reject the rest through the back, and rebuild the sand dune.

10

Q. You use the word "float" not in the sense of floating on water? A. It is floating on water. Everything is floating on water. The final result is that you have a dredge pont on which you have a dredge and the concentrating plant behind. As it digs forward and refills at the back, the effect is that the pont moves.

20

Q. In other words, if you were going to dredge ML.44 you would dig a hole big enough to come to the water level? A. Yes. It is not very deep. Ground water is perhaps 15 feet.

MR. MILNE: Q. You have told us where one dredge came from. That is the southern dredge. It came from Byron Bay? A. Yes.

Q. You told us that was in 1970? A. Yes.

30

Q. What about the northern dredge? A. The northern dredge came from Munmorah, 10 or 15 miles north.

HIS HONOUR: Q. When did that come? A. In 1971.

MR. MILNE: Q. That is the one that is not operating? A. Yes, at the northern end.

Q. What are the sizes of those dredges in relation to the size you were using in the 50's?

A. They are considerably larger.

Q. You told us that the dredge that ended up at North Stradbroke Island was a dredge which had been designed and paid for with this Toukley area in mind? A. Yes.

40

Q. I want to take you ---

HIS HONOUR: You mean ultimately in mind?

MR. MILNE: Q. Yes, at the end of the 14 years it was to come down to Toukley? A. That is so.

Q. And you say your company committed itself to that expenditure at some earlier date? A. Yes.

Q. I have forgotten what the date was, but you did give it? ---

HIS HONOUR: Q. 1965-1966? A. We designed the original plant.

10

MR. MILNE: Q. After you acquired your interests down in Toukley, that is to say, about 1957, did the company give any consideration to where it was going to treat the heavy mineral that you got from there? A. Oh yes, we also did acquire another area more or less during the same period, and this was north of Newcastle at Swan Bay, south of Port Stephens, near Salt Ash; and further north near Laurieton, as I mentioned before, we had some more leases. I think it was 1962 or 1963 that we made a survey and analysis of our expansion plans for what we called the southern division. The aim was to have a treatment plant somewhere close to a port of shipment, and the natural place for the port of shipment was at Newcastle, as opposed to the northern division where the port of shipment is Brisbane. And then we have to analyse and find a suitable location for such a treatment plant. I think we found three places that ---

20

Q. You need not tell us about the three. Did you ultimately find one at Hexham? A. Yes, finally we decided on Hexham.

30

Q. Do you remember what that cost? A. The land cost something like £25,000 I think.

Q. What about the building? A. £1-million.

Q. Tell his Honour what that is for. That is a plant where you take the heavy mineral in, and by various processes you separate out the zircon, rutile and ilmenite? A. Yes.

HIS HONOUR: Q. You referred previously to the dredge as originally having an estimated cost of 1.6 million, and the actual cost of 3.4 million - pounds or dollars? A. Pounds.

40

MR. MILNE: Q. The theory was that the Hexham plant was to treat the mineral in the southern

division? A. It was completed for the treatment of the mineral of the southern division, yes.

Q. Can you tell us when it was that you bought Hexham? A. I think it was 1963.

Q. Since you have been operating both in Munmorah and south, where has the heavy mineral gone from there to be treated? A. In 1963?

Q. No, since you have been operating in Munmorah and south, where have you sent your heavy mineral to? A. When we acquired Wyong they had a small treatment plant that was treating the mineral that was mined at Lake Munmorah and after we acquired Wyong Minerals it was obvious that economies would be achieved if that mineral was also treated at Hexham.

10

Q. So you send it to Hexham? A. Yes.

HIS HONOUR: Q. Where was the Wyong mineral treatment plant? A. Right alongside Munmorah Lake.

MR. MILNE: Q. Did you close that down? A. We eventually closed that one down.

20

Q. Similarly, I suppose, with the heavy minerals from the southern most of the Toukley leases, and that has also gone to Hexham, has it? A. Oh yes, but it so happens that we have not yet mined any mineral, that we used to call Toukley.

Q. I follow - A. Because that is ML.44, and we have not mined ---

Q. But you have mined the leases that used to belong to Wyong, being part of 42 or 48? A. Yes.

30

HIS HONOUR: Q. Don't you call that Toukley?

A. Well, we used to call Toukley ML.44.

Q. Have you any special name for 42 or 48

A. We usually call that Tuggerah or North Entrance Peninsula.

CROSS-EXAMINATION:

MR. WILCOX: Q. The Hexham processing plant was established in about 1963, was it? ---

HIS HONOUR: Q. The land was bought then, I think you said? A. Yes, it was opened later.

40

MR. WILCOX: Q. Can you tell us when it was that

the plant was actually opened? A. I think it was 1965 or 1966.

Q. Then that, of course, was before any dredging was taking place on the land leased by your company at the Toukley or the Wyong Alluvials land?  
A. Yes.

Q. What was the source of your heavy mineral to keep the Hexham plant operating from 1965 or 1966 when it started? A. It was the other area north of Newcastle that I mentioned before - the big Swan Bay area, as well as some of Laurieton. 10

Q. Swan Bay is near Port Stephens? A. Yes.

Q. Is that still operating? A. Yes.

Q. Is the Laurieton area still operating?  
A. Yes.

Q. Of course, you have the Lake Munmorah leases also still operating? A. Yes.

Q. And they all send material to the Hexham plant, do they? A. Yes. 20

Q. You told us that your company was now a subsidiary of Consolidated Goldfields of Australia. I think that company in turn is a subsidiary of Goldfields International, is it not? A. Yes, that company is a subsidiary of Consolidated Goldfields Limited in London.

Q. And that is a company that is substantially British and South African owned and controlled?  
A. It is a London company. (Objected to.)

Q. Over the years your company has made a considerable number of applications to the Mining Warden in respect of ML.44, has it not? A. A number of applications? 30

Q. Yes, for instance, for suspension of labour conditions? A. Yes.

Q. And since your company took over Wyong Alluvials to your knowledge that company has made a number of similar applications to the Mining Warden's Court in respect of these mining leases - the leases with which we are concerned in this suit? A. The necessary applications to keep them valid are being made periodically when required. 40

Q. What I put to you is that both companies have

made such applications as have been necessary over the years to ensure a continuing suspension of the labour conditions of the leases; is that right?

A. Yes.

Q. Because the fact is that the leases were not being worked in accordance with the terms of the mining leases - that is right, is it? A. If suspensions are required they are made because the necessary working is not taking place.

10

Q. Each of these leases does in fact have a covenant to employ a certain number of men on the leasehold area during the term of the leases?

A. Yes.

Q. And the companies, as they are entitled to do under the Act, have made applications for suspension of those labour conditions; is that right?

A. Yes.

Q. Indeed, those applications have been made right up to and including applications in 1971?

20

A. I am not fully aware what kind of applications have been recently made, but normally we keep these applications going when required.

Q. The fact is that even at this moment the labour covenants on each of the four leases are suspended? A. I was not aware of that.

Q. You would be aware of this, would you not, that in each case when the application for suspension has been made, the reason given to the Mining Warden is that the mining of the lease was not economic at present mineral prices? A. I am sorry, I did not know this was used, these words.

30

MR. WILCOX: I think there are documents in Court. If my friend can give me an assurance that he will be calling a witness who is familiar with the detailed working of the leases, I will be content ---

HIS HONOUR: Q. The expression in the leases I did not quite understand. What does this mean: "The lessee shall not conduct any dredging or other mining operations on or under the main frontal sand dune nor within one foot of the seaward side of the base thereof". A. I am not sure of the meaning. I think it has something to do with the protection of the sea shore.

40

Q. I wondered how you identified the main frontal sand dunes? A. I am not sure.

MR. WILCOX: Q. Is the position that when your company first acquired ML.44 it would not have been economic in the then state of the market and with the then available equipment to proceed to mine it?

A. 1956/1957 was what we term the area, the time of bust after the titanium boom - whatever that means. Rutile prices went up when the titanium metal was sought after for various military purposes, particularly in the United States, and you may recall that Sputnik went up, I think it was in October 1957. That changed the strategic demands, and this caused a bust in the rutile mining.

10

HIS HONOUR: Q. A recession? A. And the prices skyrocketed - at one stage were correspondingly low, dropped back to very low levels.

Q. After 1957? A. Yes, at the end of 1956 and 1957, and under those low price conditions it seemed that it would not be economical to mine with the equipment we had available at that stage.

20

MR. WILCOX: Q. That is at the time that you took the decision to acquire the lease, or acquire the right to obtain the lease, you purchased it in the knowledge that in the then state of the industry it would not be economical to mine it immediately; is that right? A. Yes, immediately.

Q. So really you bought the right to the lease with the idea that it would be a useful addition to the company's reserves? A. Yes.

Q. Against the day when market conditions or technical conditions might change and make it economic to mine? A. Yes.

30

Q. I suppose you so controlled the affairs of the Company as to the best of your ability to exploit the resources available to the company to the maximum benefit? A. Yes.

Q. And in scheduling which areas you are to mine priorities you have regard to the particular features of the area and the grade of mineral? A. Yes.

Q. And you have elected to defer any mining on the four subject leases until very recent times?  
A. Well, at that stage we only had control over one of these leases, ML. 44, and we intended to mine it at a later date.

40

Q. Indeed, it would not be economic to mine ML.44 even at present if you did not have the benefit of the Wyong Alluvials leases, would it?

A. I would not say that. ML.44 is minable today with the equipment we have.

Q. The fact is that the grade of mineral in each of these four leases is extremely low? A. In today's terms those grades are quite acceptable. We are mining lower grades.

Q. But they are very low by comparison with the grades which have been experienced in the industry over the last twenty years? A. Oh yes, it is a trend. 10

Q. It has only become economic to mine them by reason of technical changes which have occurred even in the last three or four years? A. Five years, five or six years.

Q. I suppose when your company acquired Wyong Alluvials it made inquiries regarding the legal entitlement of Wyong Alluvials to mine the leases it had? A. Yes, a check was made.

Q. I suppose your company has been legally advised by competent solicitors over a period of years? A. Yes. 20

Q. Indeed, over the whole of the period with which we are concerned, from the mid-fifties to the present time? A. Yes.

Q. You would, of course, have been aware in 1967 of the existence of town planning restrictions? (Objected to.)

Q. I mean, of the existence of town planning restrictions in general within this State, in some areas? A. Yes, I was aware of that. 30

Q. May I take it that you would have had inquiries made by your solicitors or by some competent officer of the company to ascertain the position in relation to the Wyong Shire before deciding to acquire Wyong Alluvials? A. When we decided to acquire Wyong Alluvials we looked into the mining reserves and were aware that they had mining leases in the district. It appeared to be in order from our point of view. 40

Q. I asked you whether you inquired as to the existence or effect of any town planning restrictions? A. I do not recall that.

Q. You do not recall doing that? A. No.



Q. I take it that you had not then made any such inquiry in 1963 when you acquired the land at Hexham for your processing plant? ---

HIS HONOUR: When you say "such inquiry" you mean about the land in the Shire of Wyong?

MR. WILCOX: Q. Yes, as to the existence of any town planning restriction in the Shire of Wyong?

A. I clearly remember it was heavy industrial zoning.

10

Q. You knew that such creatures as zonings did exist at that time? A. Yes.

Q. When you took the decision to spend a lot of capital in setting up the Hexham plant, did you make any inquiry as to the existence or effect of any town planning controls within the Shire of Wyong, from which you proposed to draw material? A. I do not recall.

Q. You do not think you did. You have spoken of an area on North Stradbroke Island in Queensland. I think the area to which you refer is an area known as S.N.L. 931, which includes a hill called Yarraman Hill, does it not; is that right? A. I do not think so. The lease - this plant I was talking about entered - is a longer frontal lease that stretches right along the front of the island. I am not aware of the number that belongs to the lease.

20

Q. I do not expect you to know the lease number, but does the lease include the Yarraman Hill area?

A. I am not sure whether the same lease included the Yarraman Hill area.

30

Q. The Yarraman Hill area is an area that is now under the control of your company? A. Portion of it, yes.

Q. And it is an area, is it not, that as to part was mined in about 1965 by Titanium and Zirconium Limited? A. Yes, Titanium Zirconium had an operation in Yarraman.

Q. Yarraman Hill is a hill which goes up to about 300 feet above sea level at its highest point? A. It could be.

40

Q. And it was designated, was it not, because of the features of the area, a restoration research area in 1966? (Objected to.)

Q. You can confirm, can you not, that in 1966

approximately the Yarraman Hill area which had been recently mined by Titanium & Zirconium Industries, was designated as a rest ration research area?

A. I was not aware of that.

Q. There was some attempt made to restore a Yarraman Hill area by some plan prior to your company taking over the lease, was there not?

A. That is so.

Q. Have you personally inspected that area?

10

A. Yes.

Q. Would you agree with me that the slope at Yarraman Hill has a maximum steepness - it is about a 35% slope? A. I would not know. It is a hill.

Q. Do you agree with the proposition that once you get a slope of more than 15 to 18 degrees, you experience very great difficulties in obtaining any acceptable percentage of cover after revegetation attempts? A. Well, I know there is a theory that this is so, but we have proved at Yarraman since we took over, that we can very successfully restore that area.

20

HIS HONOUR: Q. What do you mean by restore?

A. Rehabilitate the vegetation, grass and bushes, the natural growth. The whole thing is a question of skill and effort and money. You can do it, and we have done it.

MR. WILCOX: Q. I want to show you a bundle of seven photographs which I suggest are photographs taken of your company's lease at Yarraman Hill. Would you look at them ----

30

MR. MILNE: It should be put to him, when.

MR. WILCOX: I understand they are quite recent photographs.

MR. MILNE: It should be put to him that photographs taken recently -

MR. WILCOX: Q. Seven photographs taken recently of your company's leasehold area at Yarraman Hill?

A. I cannot take it for granted these are pictures taken at Yarraman. It is a swamp area.

40

Q. Does not your leasehold adjoin the swamp area? A. I beg your pardon?

Q. Does not your leasehold adjoin the swamp area? A. Oh yes.

Q. As one can see from two of those photographs, the effect of mining with the restoration that has been achieved is to cause the dunes to move into the swamp? A. I would not say that.

Q. Does that not appear from those two photographs? A. This is a natural feature right throughout the East Coast of Australia, that sands are moving forward.

Q. You say that the dunal system has not moved since Rutile mining occurred - do you say that? 10

A. I would not know whether it has moved more or not, but I am sure it would have moved with or without mining, right along the coast.

Q. Do you regard those photographs as indicating an acceptable degree of restoration of the mined areas? (Objected to.)

HIS HONOUR: I think the question can be asked in a general way.

Q. Wherever they were taken, do the photographs show an acceptable restoration? A. There is a number, five I can hold here in my hands - they all look fairly in the early stages of growth here in the background, you can see marked growth. It is like any agricultural work. Plant life takes time, and coaxing. 20

Q. Do I understand you to say restoration would look like that at some stage, and you suggest an early stage? A. Yes, some of it. Some of it does not look so good. I am not an expert, but this section here does not seem to be very good. But our restoration - I think we have about 40 people working there now. They repair things when the area gets any damage, until restoration has really taken place and the growth is established. 30

MR. WILCOX: Q. Accepting that the restoration work shown there appears to be at a fairly early stage, do you regard that restoration as being satisfactory?

A. I am not an expert in restoration, except that we have our own men who do the restoration, and I - some of this looks promising, some of it looks still to be repaired and fixed up. 40

Q. There are some very bad blow-outs there, are there not - a blow-out of sand where the sand has been previously moved into position and has blown away? A. I cannot see any blow-outs in any of these five pictures.

Q. (Approaching.) Would you look at that photograph, which shows the hill itself? A. Yes.

Q. You see the places where the sand has been apparently blown away? A. Yes. I would think - I would expect that if this was taken recently, which I do not think it was, this would not be there any more now.

HIS HONOUR: Q. I did not catch that? A. This would not be there any more now. I would expect that to happen. 10

Q. I still did not hear what you said? A. If it was taken recently it would have - some measures would have been taken to rectify it.

MR. WILCOX: Q. I have marked that one with an "A" to identify it. A. There is a tremendous programme of restoration going on at North Stradbroke, your Honour. A very great effort is put into it. As I said before, I think we have about 40 men there, and they have to work on a stretch of something like 20 miles. 20

HIS HONOUR: Q. I imagine that in the case of restoration of sand dunes you would often have trouble with gales or heavy rain washing away some of the restoration, until it is established? A. It can be heartbreaking, your Honour. We have done a tremendous amount of work prior to the cyclone last year, and a great deal of it has been ruined. We had to do it all over again, but then we were much luckier because there was a wet season. You remember we had four or five years of drought previously, but the wet season allowed us to get vegetation established. And the cyclone, Daisy, did very little damage on those areas that have been mined and restored. 30

MR. MILNE: I take it these photographs are tendered as being taken recently?

MR. WILCOX: They are tendered as photographs taken recently of the area at Stradbroke Island held under lease by the company. 40

MR. MILNE: That is certainly not proved.

MR. WILCOX: (Approaching.) Q. How recently have you been to Stradbroke Island? A. About six months ago, and unfortunately I broke my legs.

Q. You see a couple of signs here "Restored land. Vehicles keep off". Is that the sort of sign

that your company has on the area at Stradbroke Island? A. Yes, they put it there to avoid damage.

Q. Take some time and study what you can see in the photographs of the general lie of the land and the position of the water. Would you agree that they do show your company's leasehold area? A. I would not like to say where this was taken. I cannot recognise it.

Q. You cannot recognise that as being taken on your company's leasehold area at Stradbroke Island? A. It is similar. 10

Q. It is similar? A. Yes, but I could go to many places on the coast where you could take a similar photograph.

Q. Is that sign the sort of sign that your company puts on the land? A. Yes.

Q. Have you ever seen anybody else have a sign that is precisely the same as that? A. I do not recall. 20

Q. So you would say that whether it is at Stradbroke Island or somewhere else, it appears to be your company's workings? A. It could be in an area, yes.

Q. Is that the best you can do? You cannot tell his Honour that that is an area held under lease by your company? You cannot deduce that even from the sign? A. I cannot say that. We have 20 miles there of lease, and it could be on it. It could not be on it. 30

Q. You need not trouble yourself with precisely which lease, but do you agree that it shows areas which have been mined by your company? A. I could not say this.

Q. Were you aware of an inspection that was made to your company's leasehold areas at Stradbroke Island by the Assistant State Mining Engineer, a Mr. Stapleton, late in 1971? A. They regularly inspect.

Q. As a result of that inspection, your company was informed by the Queensland Minister for Mines that unless its restoration work was improved significantly, the Minister would cancel the security deposits which had been lodged with him for forfeit? A. I saw that in the press. 40

Q. Did you receive some communication from the Minister for Mines to that effect? A. I have not seen any communication.

Q. But you did see that in the press as a statement that the Minister made in the House? A. Yes.

Q. And he was referring to Stradbroke Island at the time? (Objected to.)

Q. Coming nearer to home, are you aware of a complaint made by the New South Wales Department of Mines about 12 or 18 months ago about the quality of restoration work done by your company in the Soldiers Beach area? A. No, I am not. 10

HIS HONOUR: Do you mean, to the defendant?

WITNESS: I am not aware of that.

MR. WILCOX: Q. Do you personally handle complaints as to the quality of restoration work? A. We have a restoration section operations. Mr. McKellar would be aware of that. He is our restoration manager. 20

Q. You would not be in a position to know what complaints have been made about restoration - you would leave that to Mr. McKellar, would you? A. Yes.

MR. MILNE: I have no questions to ask in re-examination.

(Witness retired.)

MR. MILNE: Mr. Merrick has now returned to court, your Honour. Are you now able to produce all the documents on the subpoena? 30

MR. MERRICK: Not all.

MR. MILNE: Can you tell us which ones you can produce?

MR. MERRICK: Yes, I produce the ones indicated in paragraphs 4 (a), (c) and (d), 5(a) insofar as it refers to paragraph 4(d).

MR. MILNE: That still leaves 1(a), 3(a) and 4(b) missing?

MR. MERRICK: Yes, that is right.

MR. MILNE: Is any of 5(a) still missing? 40

MR. MERRICK: Insofar as it refers to 4(b) and (c).

MR. MILNE: Can you tell his Honour what the prospects are of finding those missing files?

MR. MERRICK: We can only duplicate the search we have already made.

HIS HONOUR: 4(b) is missing, "Authority to prospect in relation to mining lease 51". If it is anywhere, it should be in some store?

MR. MERRICK: Yes, in Shea's Creek at Alexandria. We have made a search out there.

10

MR. MILNE: 1(a) and 3(a), 4(b) and part of 5(a) is still missing?

MR. MERRICK: Yes.

HIS HONOUR: Mr. Merrick, I do not know what can further be done. If any further investigation can be made, I would like you to make it.

MR. MERRICK: I think some of the items that are missing are duplicated.

HIS HONOUR: I see in relation to 1(a) there is in pencil "same as in 3 below". 1(a) and 3(a) are both the same thing, and it is missing?

20

MR. MERRICK: Yes.

HIS HONOUR: I would like you to continue the search, because it must be somewhere.

MR. MERRICK: Yes, your Honour.

(Short adjournment.)

ON RESUMPTION:

(Mr. McKellar, who is to be a witness, allowed to remain in Court by consent.)

JOHN PATRICK MINOGUE  
Sworn, examined, deposed:

30

TO MR. MILNE: My full name is John Patrick Minogue. I live at 22 Peterson Street, Somerton Park, South Australia.

Q. Mr. Minogue, I think you are a State Mining Engineer in the State of South Australia, and in fact you are the Chief Inspector of Mines for South Australia? A. That is correct.

HIS HONOUR: Chief Inspector of Mines?

MR. MILNE: Mines.

Q. You are a Bachelor of Engineering, majoring in mining and metallurgy from Sydney University?

A. That is correct.

Q. Having graduated in 1950? A. That is correct.

Q. And your practical experience is this, that you spent two years at Mount Isa Mines? A. That is correct.

10

Q. Some eighteen months at Lake George, at Captains Flat, New South Wales? A. Yes.

Q. Two years at Bulolo, New Guinea? A. Yes.

Q. Four years with Associated Minerals Consolidated Limited at Southport in Queensland? A. Yes.

Q. Five years as an engineer with the Water Supply Department of South Australia? A. Yes.

Q. And I think you have been six and a half years with the Department of Mines of South Australia as an inspector? A. That is correct.

20

Q. And I think you were appointed as a State Mining Engineer in June 1971? A. That is correct.

Q. And I think in particular your association with Associated Minerals was from approximately June 1956 until about April 1960? A. That is correct.

Q. While you were with that company you were employed as a mining engineer and you were in charge of the company's mineral exploration? A. Yes.

Q. After you had been there for some few months you were appointed as the company's works manager? A. Yes.

30

Q. While you were works manager you still remained in charge of their mineral exploration and so remained until March 1957? A. That is correct.

Q. I think that in March 1957 your position in charge of mineral exploration was taken by Mr. McKellar? A. That is approximately correct, yes.

Q. And from March 1957 you were solely engaged as works manager in charge of various projects of the company? A. The production.

40



Q. The production. Do you recollect the prospecting activities that the company carried on while you were with them in the Tuggerah area? A. I can recall this, yes. Toukley and Tuggerah.

HIS HONOUR: What has been called Toukley to refresh your recollection recently is the northern area ML.44, and separately one is referred to as either Tuggerah or North Entrance.

MR. MILNE: Q. Can you remember a man called Mr. McLaren with the company? A. Yes, I can remember Mr. McLaren. I could not think of his first name but I remember Mr. McLaren. 10

Q. Do you remember his going down with a team of men to do some work on the Toukley area? A. Yes. I can recall Mr. McLaren was sent down there.

Q. I think you went down there on one occasion and had a general inspection of that area? A. On one occasion, yes.

Q. You are able to tell his Honour what the practice was in the field at that time for doing part of the work that was being done by Mr. McLaren? A. Yes. 20

HIS HONOUR: Q. When was that time? A. The exact timing I can't recall. It would have been between my joining the company in approximately June 1956 and when Mr. McKellar took over in 1957.

Q. Some time between June 1956 and March 1957? A. Yes.

MR. MILNE: Q. Was this the practice and is this a common practice in doing this sort of work? Do you agree with me as I go along or disagree with me, or correct me, please? A. Yes. 30

Q. That the man who goes out to put these holes down drills the holes firstly generally in one length of two-feet, takes out a core, then two to five feet, takes out another core, then five to ten feet and so on in five-foot lengths? A. In general. This is the accepted type of practice, yes.

Q. This is done by an auger, is it? A. This type of prospecting, yes. An auger-type of sampler would be the accepted practice. 40

Q. As each length of the sample is taken out, 0 to 2 feet, two to five feet and five to ten feet, and so forth, it is taken out and mixed up on the

ground? A. It is usually put on a piece of canvas or something like that, mixed up thoroughly each sample, and then it is quartered, divided into four parts, in mining parlance, combed and quartered. It is quartered and re-quartered.

Q. You throw away three-quarters and keep a quarter and quarter it again until it is reduced to a sample of about one to two pounds? A. In broad principle this is correct, yes. 10

Q. And those samples are put in sample bags which are made of some sort of material, cotton or canvas or something like that. They are then tagged so as to identify the hole number? A. Yes.

Q. And to identify the length from which they were taken? A. That is correct.

Q. So that you might have a hole which is called Hole X and you might have a note on the sample to say that it is taken from the section five-to-ten feet? A. That is correct. 20

Q. And then the practice was that those samples were taken back to Southport? A. Yes.

Q. And they were dried in a drying machine, with ovens? A. With ovens.

Q. And the samples were then reduced to packs? A. You have what was commonly referred to as a sample-splitter.

Q. A sample-splitter? A. Yes.

Q. And the samples were panned in a cylindrical pan so as to wash off the non-heavy material and leaving the heavy material at the bottom of the pan? A. Yes. This is akin to common goldmining type of activity, of panning. 30

Q. Then the heavy layer that is left was dried and was weighed and was put into a cellophane bag? A. Yes. Each individual sample was kept separate.

Q. And the original tag was put in the cellophane bag and at that point of time all of those samples during this period of time used to come to Southport? A. That is correct. 40

Q. And a gentleman called Mr. Cyril O'Neill used to give them to you, he having done the earlier

work? A. Mr. O'Neill used to come to my office and put them on my ---

HIS HONOUR: Q. Your office was where? A. At Associated Minerals, Southport.

MR. MILNE: Q. Did you then commence to prepare the bore log? A. This is common practice. A bore log must be prepared.

Q. Would you look at the folder that I now show you. Do you see that it has got written on the front of it, it has marked on the front of it "bore hole leases AP 1653". Do you see that? Is that in your handwriting? (Shown.) A. That is not my handwriting.

10

Q. What about on the back of it? "Toukley"?  
A. No, that is not my handwriting. Once again it is AP 1653.

MR. MILNE: Your Honour had the evidence that the original authority to prospect was numbered 1653.

HIS HONOUR: I do not recollect.

20

MR. MILNE: That is the evidence.

Q. I want you to look. This file contains a number of pages which are each entitled "boring records". Do you see all of those records? (Shown.)  
A. Yes.

Q. Are those records in your handwriting?  
A. By and large, yes, they are.

Q. By and large yes they are, and do they refer to the records of each one of the samples which you have described already? A. Yes. They appear to be a record of what was our current practice or accepted practice.

30

Q. And what did you deduce, what was the ultimate deduction you made from each one of those samples? A. From each sample one may make a calculation of the percentage of heavy minerals that applies to that particular hole that is drilled.

Q. Have you got any idea how many holes are in that file? A. I would not.

Q. You have got no idea. Having prepared those documents, what was the next step that you took?  
A. Once an area is finished with as a total area the next step then is to ---

40

HIS HONOUR: Q. Would you speak up, please. I can't hear you. A. Once that is finished with the total drilling plan finalised, and this is all entered on to some form of drawing to a given scale, and the calculation of the tonnage figures is then applied to the given area, and from that you are able to deduce what the value of the, or the mineral content of the total area is. One can also deduce what percentage of that area could be an economically viable proposition. 10

HIS HONOUR: Q. Having entered the particulars from the samples in that book, you took some final result from that on some other piece of paper?  
A. Yes.

Q. Is that piece of paper on which you put those results in that book or on somewhere else altogether?  
---

MR. MILNE: Q. What are the graphs that are part of the book? A. This is not in my writing.

Q. And can you tell us what they are by looking at them? A. Well, this is a drawing of an area which is showing co-ordinate numbers to identify the hole. It appears also to be showing the percentage of heavy mineral. The figures appear here as a fraction, and I would take it that the top of the fraction represents the percentage of heavy mineral in that hole and the bottom represents the depth to which it would go. 20

HIS HONOUR: Q. Is that the document to which you are referring as the document to which you transferred it? A. This is the general type of thing. 30

MR. MILNE: Q. The second graph is sheet page value?  
A. This is more or less a summary of a graph of bore holes.

Q. And the third page, is that the same?  
A. Yes, that is the same. It is just a continuity of the ---

Q. --- the last sheet. That is to say the one on the clear paper, is that your composition?  
A. Yes. That is compiled by me; and from memory of the distance it would appear that I delineated an area that I considered was possibly worth mining. 40

Q. Is that the white area or the red area?  
A. I would presume that the area to be mined would be the white area, to show continuity. If that was broken off it would be two separate

operations. In other words I have deliberately included on the areas as the dredge path could proceed through ---

Q. So that that means that the white area is the area which you supposed at that time the dredge would operate on? A. That is correct, because you can only take one's figures at a point of time with due regard to the price of mineral and to available metallurgical processes that are currently available for utilisation. 10

Q. What does the red represent? A. I would say that those areas would represent areas that were sub-grade at that point in time.

Q. In other words in areas which were not, you thought, worth working? A. At that point in time.

Q. Do you yourself know how many men Mr. McLaren had down there? A. No. I could not truthfully answer that.

HIS HONOUR: Q. Was the book drawn in that period or later than that? A. No. Those calculations would have been made by me prior to Mr. McKellar joining the organisation. 20

Q. That is before March 1957? A. Yes.

MR. MILNE: Q. I am sorry, there is one thing I forgot to ask you. Do you see the printed plan in the front. Are you able to tell us by looking at that what it means? A. It has not printed up very well but I take it it is to be a decimal point in front of the numbers to the left of the bore holes. I would presume this refers to the percentage of heavy material. The figure to the right of the bore hole represents the depth. 30

Q. One of the red dots being the bore hole?  
A. Being the bore hole.

(Book entitled Bore Hole Logs, AP.1653  
tendered and marked Exhibit 2.)

HIS HONOUR: In those graphs that have been described at the back of the book there are a number of little circles with figures attached to them. Some of the circles have been filled in in red, some have not. Was there any significance in that? 40

WITNESS: I did not do those. I don't think I did. It may be it is a notation used by the person who was compiling that to the relative significance.

MR. MILNE: Q. You did say that it had been established otherwise that AP1653 was the number of something else. I don't recollect ---

MR. MILNE: Your Honour will recall that the evidence was that the man Nicolle had an authority to prospect for twelve months from December, 1965?

HIS HONOUR: This is ML.44?

MR. MILNE: Yes. That is the early history of ML.44.

HIS HONOUR: Is that admitted, that authority to prospect 1653 referred to ML.44? 10

MR. WILCOX: I understood that was so. If my friend says it was so that is good enough. If that be so it is common ground. If my friend tells the Court that log is what is on ML.44 and only on ML.44.

HIS HONOUR: Mr. Wilcox will make an admission, as I understand it that AP 1653 related to and only related to authority to prospect 1653, if you tell me that was the position.

BOTH COUNSEL: To ML.44. (Discussion ensued.) 20

HIS HONOUR: For the time being I will just note that it apparently relates to ML.44 and we will deal with it later on.

MR. MILNE: May I substitute that exhibit which I have in, that is the one that your Honour has got in your hand for the original Exhibit 1?

HIS HONOUR: That is Exhibit 1.

MR. MILNE: I now tender the aerial photograph.

HIS HONOUR: Was there evidence as to the approximate time as to when that was taken? 30

MR. MILNE: No, I think not.

(Aerial photograph tendered and marked Exhibit 3.)

(Special Mining Leases 176, 202, 369 and 175 tendered and marked Exhibit 4.)

(Plan No. 1312 showing sites of boreholes tendered and marked Exhibit 5.)

(Operations plan, formerly Exhibit 5, tendered; tender objected to; admitted subject

to proof of the operations described on it  
as Exhibit 6.)

MR. MILNE: Q. (Referring to plan with bore holes  
and Exhibit 2.) I know you have never seen this  
plan before, but do you recognise the top area with  
the red crosses on it ---

HIS HONOUR: Q. That purports to show the site of  
ML.44? A. I admit I have never seen the plan before.

MR. MILNE: Q. Mr. Minogue, in earlier evidence 10  
apparently it was suggested that the holes which  
you have described took place in the period between  
December 1955 and December 1956. I think you have  
suggested that it must have taken place between  
June 1956 and March 1957. Would it be consistent  
with your recollection that it would have taken  
place between June 1956 and December 1956? A. June  
1956 and December 1956.

Q. June 1956 - is that when you say you went 20  
there? A. Yes.

Q. I think you have said it would have taken  
place between June 1956 and March 1957. I am asking  
whether it is your recollection - and if you have  
no recollection say so by all means - whether it  
would have been concluded before December 1956?  
A. I honestly cannot recall.

HIS HONOUR: They do not quite coincide. Some times  
there seem to be a few more holes, sometimes a few  
fewer holes.

MR. MILNE: I think I can call the author of it. 30

CROSS-EXAMINATION:

MR. WILCOX: Q. Mr. Minogue, the purpose of the  
operations you have described was to ascertain whe-  
ther there were mineral-bearing sands in the area,  
and if so what they were ---

HIS HONOUR: And where.

MR. WILCOX: Q. And where, yes. A. Yes.

Q. And the purpose - each of the pages in the  
report deals with a particular sample which had  
been taken, is that right? A. Yes. 40

Q. By the time that you had completed looking  
at the results of the bores you were able to weigh

up the economic desirability of carrying out any mining and if so approximately where the dredge would operate? A. In broad terms, yes.

Q. In broad terms, yes; and that, the graphic representation of that is the last document which I show you to show the red areas and the white areas?

A. This is all fifteen years ago now.

Q. I think the way you have described it ---

A. I really could not pursue that.

10

Q. I think you said that the white areas delineated the area which was probably worth mining and the red area represented areas which were not worth mining at that time? A. Yes, that was my answer. It may be I have not got the exact figures there. They may not be worth mining full stop, or they may not be worth mining at that point of time, but there was some delineation between the two areas.

Q. At this point of time you can't remember whether you formed any opinion in favour of mining any part of ML.44? A. No, I could not. But by inference I would have had some basis. Otherwise I don't think I would have bothered to draw the line. Some areas might have been a little bit more attractive than others, and yet the hole not worth contemplating.

20

Q. If you cannot remember please say so.

A. That is relative after fifteen years and a number of other objects, I really can't tell you precisely.

30

Q. After fifteen years and a number of other objects you really can't tell us precisely what opinion you did form about the economics of mining in the particular portion of the area? A. Not on the records that are there. There may have been more, I don't know.

Q. On this particular area of land ML.44, did the company drill one hole and take samples at various depths or drill different holes for the different strata of depth? A. No. It is standard practice to drill a hole, and it is normally the first hole I would say in this type of operation that would tend to set the pattern. In other words, I would say if somebody showed me a group of bore logs such as that, I would say that the interval 0 to 2 feet virtually represented nil value whatsoever. Therefore this being an illustration that the first sample interval would be 0 to two feet ---

40



Q. You take a sample of 0 to two feet and one of two to five feet? A. Yes.

Q. And so on? A. Yes.

Q. You get them all out of one hole? A. Yes.

Q. And you have a separate sheet in your bore log for each of those samples? A. No. A bore log is normally a running thing. It does not matter whether you are drilling with eleven feet with some of those or whether you are drilling for oil and you go to 12,000 feet. It is one log for the one bore. 10

Q. I think the way you have recorded it is a different sheet in the paper for each of the samples for each hole? A. Yes. One bore log represents the result of one hole.

Q. It would appear that on this area ML.44 there was something like about 120 holes drilled, or about one about every four to four and a half acres. Would that be in accordance with your recollection? 20

A. No, that would not necessarily be valid. That would be from the scout boring. It would be boring one hole to four and a half acres.

HIS HONOUR: Q. Quite apart from what it would have been, do you recollect how intense the boring was. Do you know in ML.44 how many samples were drilled, what the result was? A. No. Quite candidly the terminology ML.44 means nothing to me. It may not have been mining long at that point of time. 30

MR. WILCOX: Q. That is a fair comment. The area upon which that bore log drills and which you delineate in white and red, now known as ML.44, would the number of holes have any ratio of approximately one to every four and a half acres or thereabouts. Would that accord with your recollection or don't you remember? A. No, I don't think so.

Q. What was your recollection? A. I could not answer that question. I would say, though, that from the exhibit that has been tendered it was done to some systematic grid. 40

Q. I am not suggesting it was not in a systematic way. A. You are talking in terms of acres; I am talking in terms of feet apart from the boreholes.

Q. Would not you give any estimate of the number of acres per hole? A. No, I could not.

HIS HONOUR: There are 113 red crosses in Exhibit 5 and the area is 578 acres, less public roads.

RE-EXAMINATION:

MR. MILNE: This may not be strictly in reply, but if one may have liberty ----

HIS HONOUR: Yes, very well, subject to -

MR. MILNE: I want you to assume that the file I am now showing you is the Mines Department file, Authority to Prospect 1653; and I want you to look and read a letter dated 29th November, 1956, to the Under-Secretary of Mines; and then I want you to look at the plan; read it to yourself -

10

HIS HONOUR: Q. Read it to yourself. A. (Witness complies.) Yes.

MR. MILNE: Q. Do you say that it refers amongst other things to a boring plan? A. Yes.

Q. I want you to assume that the document that I now show you comes out of that file and the plan that is being referred to is the plan that I now put in front of you. (Shown.) A. Yes.

20

Q. (Shown Exhibit 2.) By comparing those two plans that I now show you, are you able to say whether they are plans of the same work that was done? ---

HIS HONOUR: In other words, they relate to the same boreholes?

MR. MILNE: Q. They relate to the same boreholes? A. They are both in my writing.

Q. Both in your writing, are they? A. I am just trying to ---

30

HIS HONOUR: Would it be easier if you stood up?

WITNESS: They appear to be the same thing; the only difference virtually being that this shows the values and the depths, whereas this one does not.

MR. MILNE: Q. When you say this one you mean the one that comes out of the Mines Department records shows the values; whereas the one in Exhibit 2 does not? Is that what you are saying? A. Yes.

Q. Do you see that that plan bears on the back

40

of it a date, 11th December, 1956. It has got "Leases Branch" on it? A. Yes.

Q. Do you see that - that the first I have shown you is over the hand of a man called Mr. Nicolle?

A. Yes.

Q. You see it is dated 29th November, 1956?

A. Yes.

Q. If the fact be that Mr. Nicolle sent the plan to the Mines Department on 29th November, 1956, does that assist you in saying at what point of time, does it assist you in saying the latest point of time at which you prepared it? A. I would say it would appear from this. 10

HIS HONOUR: It is a very difficult inference to draw.

HIS HONOUR: Q. The latest date on which the drawings would be would be the date of the application?

A. I could say that I am nigh on positive that it was on the trip down to the area that I went to the Sydney University and purchased some ordinary microscopes, and I think somewhere in the company files there would be a record of the date of purchase of same. 20

MR. MILNE: Q. What we are asking you is if Mr. Nicolle sent your plan in on 29th November, you must have done it before 29th November, 1956? A. Yes.

(Bundle of correspondence taken from the Mines Department file in respect of what is now ML.44 and was previously Authority to Prospect 1653, including a photostat of letter shown to witness, sought to be tendered.) 30

HIS HONOUR: The lease itself, I might say, has on the plan which is annexed to it: "Special lease application No. 1043 at Newcastle posn. 29/11/56 by A.F. Nicolle." 29th November, 1956, was that the date of the ---?

MR. MILNE: It was the date of the letter.

(Copy of documents from file of Department of Mines relating to ML.44 and the previous AP. 1653 tendered and marked Exhibit 7.) 40

(Authority to prospect No. 1653 tendered; tender withdrawn.)

(Witness retired.)

(Luncheon adjournment.)

AT 2 P.M.:

MR. MILNE: I tender the certified copy of the authority to Prospect 1653.

(Above document admitted as Exhibit 8.)

(Plan taken from the Mines Department's file and accompanying letter 29th November, 1956, tendered and marked Exhibit 9.)

JOHN BRUCE MCKELLAR

Sworn, examined, as under:

10

TO MR. MILNE: My full name is John Bruce McKellar. I live in Southport in Queensland.

Q. Are you the operations manager of Associated Minerals Consolidated Limited? A. Yes.

Q. Are you at present a director of Wyong Alluvials Pty. Limited, the second-named defendant? A. Yes.

Q. I think you are a graduate of the University of Queensland where you graduated at Bachelor of Science in 1951? A. Yes.

20

Q. And you are a graduate of the University of Tasmania where you graduated with the degree of Master of Science 1958? A. Yes.

Q. And you have been continually associated with beach mining since 1957? A. I have.

Q. The group of companies, Associated Minerals Consolidated, are run, I think, as a single sand-mining group? A. Yes.

Q. And you are the man who is responsible for the operations of that company? A. Yes.

30

Q. And you have had and still have available to you all the records of both the defendants? A. I have.

Q. And you have been through all those records for the purposes of this case? A. Yes.

Q. And you are able from those records to give a complete history so far as is known to you of each of the four leases, the subject of this suit? A. I am able to comment on the northern most

one, that is -- we commenced with the northern most one.

40

Q. ML.44? A. Yes.

Q. That, I think, originally was held under an authority to prospect by a gentleman called Mr. Arthur Frederick Nicolle? A. Yes.

Q. That is for a term of twelve months, 7th December, 1955? A. Yes.

Q. Then there was an option obtained from Mr. McKellar by two nominees named English and Kennedy? A. Yes.

10

HIS HONOUR: Q. Nominees of the first defendant?  
A. No, they were not. They were two people who entered into some sort of agreement with Mr. Nicolle. They were not connected with this company in any way.

MR. MILNE: Q. During the currency of the authority to prospect 1653 your company entered into agreements with Nicolle, Kennedy and English? A. That's right.

Q. Which would enable your company to carry out an investigation into what is known as ML.44?  
A. Yes.

20

Q. Can you tell us approximately when that was done? A. The investigation started about mid-1956 and was completed early in November 1956.

Q. Was the fieldwork for that done by a man called Mr. McLaren? A. Yes, it was.

Q. Do you know what staff he had and labour?  
A. He had two experienced drillers with him and he put on locally four other men, sometimes five other men, for jobs like clearing drill lines through the undergrowth and doing chains and ropes sideways to establish his position and the places of holes and so on.

30

Q. Can you tell us precisely the nature of what Mr. McLaren and his men did? A. Yes. Having got a map of the area from Mr. Nicolle they would go to the area and find the datum and peg presumably which he had put in taking out his authority to prospect. From that datum together they would establish a boundary of the lease from the rock spits associated with the datum peg or from an existing fence to mark a portion boundary or something like this, and they would in effect carry out a survey of the four main boundaries. They would clear the lines of undergrowth and with brush-hooks and axes and so on, and they would measure it out with a tape and use a

40

compass to give them the directions of the lines from the point they got from Mr. Nicolle.

Having established the area, they would then decide on the drilling pattern to be employed which was no doubt the same drilling pattern that they used throughout sand areas in New South Wales in this activity. So they would then proceed to mark out and clear a series of land lines across the lease on which the drilling was to be carried out and they would mark along those lines at regular intervals, depending on the spacing of the holes that they wanted. Now they would not complete the whole of this clearing and marking before they commenced the drilling. The two drillers would probably start the first hole almost immediately and they would follow on as the clearing and survey pegs until they had drilled the whole area. 10

Now these drillers would use a hand-auger normally at that time, a three-inch hand-auger, and they would take the sand from the hole first of all to a depth of two feet and they would put it on a canvas sheet which they would mix up and then they would quarter and re-quarter this sample until they had a pound or two pounds of sample which they had put in a small canvas bag with a letter or combination of letters which they had decided on; and when they had collected a certain number of samples, they normally put about 80 of them into a cornsack and they labelled the cornsack and it went off to Southport, depending on the availability of transport, speed of drilling and one thing and another would depend how regularly they went to Southport in this manner. 20 30

The work in this case having completed the drilling, the option with Mr. Nicolle required us to prepare the reports for the Mines Department; and also to prepare the documentation in applying for a lease, should we decide that this was desirable.

Q. So that what you had to do was give it to Mr. Nicolle? A. Yes. In that particular programme there were 625 samples. 40

HIS HONOUR: Q. Out of how many holes? A. Something like 120.

Q. How many samples? A. 625.

MR. MILNE: Q. Then those samples when they got to Southport were treated in some way, were they not? A. Yes.

Q. Were you in Court this morning when Mr. Minogue gave his evidence? A. Yes, I was.

Q. Did you hear his explanation as to the way they were treated? A. Yes I did.

Q. Was that a correct description so far as you can reconstruct it from the records of the company?

A. He went so far as you get the heavy mineral content and he was able to compile a plan from which he could deduce the total reserves and certain possible dredge paths. One thing he did not mention as I recall was the analysis of those heavy material samples to determine how much rutile, how much zircon, how much ilmenite, monazite, the various contents of it. This would have been carried out in our laboratories at Southport at that time. There were a number of tests generally, this was carried out. But at that time it was probably done by a very laborious way where you put microscopic grains running through and you counted all the red ones, the white ones were zircon and all the black ones which are ilmenite. In other words, optic tests are used to decide it. Having done that I would say that the heavy material, this area is something like forty-eight per cent. rutile, forty per cent. zircon, twelve per cent. ilmenite and a variety of others. That obviously is not a precise figure, but that is the sort of result you get; and thereby knowing very much every mineral comes out of an area, you can rapidly recall how much rutile, how much zircon.

10

20

30

HIS HONOUR: Q. The number of holes suggests it went down about twenty-two feet? A. Yes.

Q. Is that right? A. Yes.

Q. That means that this depth, that is the depth to which you would normally dredge? A. No. In prospecting if there is nothing in that twenty feet the dredge becomes uneconomical because you have all that barren material to move before you get to anything; so that a normal prospecting programme, you usually ask for twenty-five feet and some of the holes are fifteen feet before they ran into mud, clay or something.

40

Q. But is it representative of what is known below, too? A. Normally, not always. But if you got this in the top twenty feet, since the sand mass is a series of sheets. The sand is blown up from the ocean beach, which is like a pack of cards, it is said, if you sample the whole of the area you get

a fairly representative sample of all those sheets of sand which made the masses.

MR. MILNE: Q. You have said I think all records relate to those tests and what they reveal? A. Yes.

Q. Have you formed an opinion as a geologist as to what those records represented in terms of profitability or viability in relation to ML.44?

A. Yes. In relation to ML.44 it became very evident in that prospecting programme that here was a valuable reserve, rutile, which the company should definitely acquire. Now you will appreciate that at that time nearly all the reserves of all the particular companies were pegged and prospected at that time. You took up an area and held the area because they were running into short supply.

10

For instance, very little significant reserves of rutile and zircon have in fact been pegged outside of the sort of areas or the area that we pegged in 1955, 1956, 1957. There are minor ones, but it was well known by that time where the reserves of rutile in New South Wales were, and nothing that we have been able to do since has turned up major additions to those.

20

So we were in a competitive position where we, having decided that this was a good area and a reserve of rutile, even did not have both an instant plan to operate it, we most certainly took it up because of the value of it.

Q. Having made that assessment of it, did you do something about the arrangement that you had with the vendors? A. Yes. The company then came to the decision that they wished to proceed with this agreement, and the next step was (a) the provision of prospecting records to the Department of Mines in accordance with the conditions of the authority to prospect; and (b) the preparation of documents, pegs and what-have-you so that Mr. Nicolle could take possession of the area and lodge a special lease application, in which he nominated Associated Minerals to get any lease that was issued. At the same time there were certain negotiations along the way with the first two partners who were Kennedy and English to pay them a consideration for what they regarded as their share in this area.

30

40

Q. Don't tell us what the split-up was, but did you pay that partnership of those three people some sum of money? A. Yes.

Q. How much was it? A. I think in total it was something like £8,000.

50



Q. £8,000; and then later on was the area pegged? A. Yes. The drilling supervisor, McLaren, prepared the documents for Nicolle, accompanied Nicolle to the area while they placed the possession notice, whereupon Mr. Nicolle signed applications and it was lodged at the Newcastle Warden's Clerk and the £70 survey fee and the £10 bona fides lodged with it.

Q. That was done on 29th November, 1956? A. Yes.

Q. Then after that application was made was anything physically done on the land until for a number of years? A. Well, the next activity on the land areas when the Mines Department put to us the list of conditions which they were going to apply to any lease which may issue; one of the issues was the excision of eighty acres of the lease, the eastern end of ML.44. 10

HIS HONOUR: Q. Where the reservation was? A. Yes, on the grounds that this was going to be the obvious development of the north of Norah. Now because of that condition it is within the lease boundary. 20

MR. MILNE: Q. Originally they suggested it be excised and they included and imposed a condition. A reserve for public recreation, that is condition 8, down the bottom of that page. (Shown.) A. Well, I said the lease shall not conduct any mining operation on that part of the land demised east of the western boundary of reserve 77013 and the prolongation.

Q. It is a map showing where it goes on the right, further to the right? A. That line there, yes. That stopped there and they took the prolongation. 30

Q. That is the eighty acres you are talking about? A. Yes.

Q. You said they raised this condition? A. Yes. They wanted at that stage to excise it from the lease. We said that in view of the fact that we had laboured ourselves with a power drill to investigate various of the deep sands, that we would like to drill this area more closely and if we turned up any significant material then we would like to keep it in the lease, and if we turned up no significant material then we would be happy to excise it. 40

The drilling in fact was carried out in 1958. A comparatively small number of holes, I think about sixteen.

Q. Is that across the north-eastern corner?

A. North-eastern corner, yes. On the basis of those results, which would have taken three or four weeks probably with this power drill, the department decided that they should leave the eighty acres within the lease area, but our specific ministerial consent would be required before we could dig that area up.

MR. MILNE: Q. I don't want to tender this document. I will give it to you to identify; is that the letter of 2nd July, 1958, to which you refer? (Shown.)

10

A. Yes.

Q. And is the last sentence of it: "The reason shown by you ... on such helio has also been excluded from any lease which may be granted any such application"? A. Yes.

Q. Does the helio show the eighty acres about which his Honour and you have just had a discussion?

A. It does, by blue hatching.

20

Q. What was the next physical step that took place on the land? A. The next physical step was when, Wyong Minerals Limited, the holders of the areas further stage, and Associated Minerals, the holder of the ML.44 area, having a common pattern company, wanted to merge their whole natural interests, because both of those companies, Wyong Minerals Limited and Associated Minerals had very large problems for the shareholders, something like 30 per cent. of each company was held by the public, it was fairly precisely determined, the assets of both companies. So the assets both being their reserves, they wanted some assessment of the reserves of Wyong Minerals as carried out by Associated Minerals' personnel; and a very extensive programme was carried out on Wyong lands which included the Tuggerah ones, and which are shown on that general drilling map. That is the one that is in hand here with red crosses on it.

30

HIS HONOUR: Q. That is the one here? A. Yes, it is a thin diagonal ---

40

Q. Exhibit 5. A. With this thin diagonal purple line through lease 51, yes. The one that goes diagonally across lease 51 from its south-eastern corner.

Q. Across to the mid-western boundary of ML.44; and another line down the south in ML.42 which also crosses the peninsula ---

MR. MILNE: Q. What year was this? A. 1964, 1963-64 possibly.

HIS HONOUR: Q. On the map - this may help you - it says December 1963 to March 1964. That would be right, would it? A. Yes.

MR. MILNE: Q. You say that involved an extension of the drilling programme? A. Yes, extensive in that the holes are spaced along that line at thirty yard intervals and the holes were carried through in almost all cases everywhere possible right through the sand mass to the clay basement underneath the sand mass.

10

HIS HONOUR: Q. Then was it satisfactory to the Mines Department? A. No. This was to satisfy the parent company that what both industries' subsidiaries claimed in the way of reserves was factual. It did also.

Q. This is Consolidated Goldfields? A. Yes. And it did the added thing of testing the deeper part of the sand mass which no normal prospecting programme does.

20

MR. MILNE: Q. Did that, I am dealing only with ML.44, come across the south-western corner of 44? A. Yes.

Q. I think there were about fifteen holes put in ML.44? A. Yes.

Q. Consisting of some one-thousand odd feet of drilling? A. Yes.

Q. The remainder of it was in the other leases? A. In lease 51 and also lease 42. The bulk of the drilling was in those two.

30

Q. Did you go through similar procedures about bagging the things up and taking them to Southport and working it out? A. Yes. The only differences were that the details, as well as all the information mentioned in the prospectus drilling, there was pretty precise stratigraphic information collected in the hole; where layers of gravel occurred, where layers of clay occurred, where changes in the colour of sand occurred, and this qualified the compilation of detailed sections of the whole peninsula showing not only grades of sand but also the physical mining conditions which would exist if you did dig or mine the whole depth of sand.

40

HIS HONOUR: Q. On Exhibit 5 in addition to the

two purple lines as shown, there are four purple lines starting on the Pacific Ocean edge of ML.48 and running into some distance? A. No, those are much later. I think that whoever drew the map called it dark blue for that particular set.

MR. MILNE: Q. Just coming back for the moment, you are now talking about a situation which took place in 1963/64? A. Yes.

Q. Prior to 1963/64 I think you have already told us that an application was made for a special mining lease? A. Yes. 10

Q. Was your company required to do anything about that? For instance, did you have to pay any money or things of that nature? A. Well, as I said earlier, we lodged with the application a survey fee and we lodged a bona fide deposit of £10 which was the stipulated amount.

HIS HONOUR: Q. It was £10? A. It was £70 in all. I think it was £60 survey fee and £10 bona fide deposit, and that was done with the application in 1956. 20

Q. The lease refers to the rifle range that a club organised somewhere in the middle of ML.44 and there was a condition that you should not interfere with the use by any member exercising or enjoying, whatever you do call it, rights in rifle shooting, should not interfere with rifle practice there? A. That is right.

Q. And through the area of that range is shown on the plan which is annexed to the lease, I think? A. Yes. 30

Q. Does that for practical purposes on that area mean it is not minable? A. Well, it becomes a matter of agreement between the rifle club and the companies.

Q. But if the club says for example "We want to fire our rifles"? A. I think that would effectively stop us mining.

Q. But it is still covered in the lease? A. Yes. 40

MR. MILNE: Q. Have you at some other time on a requirement of putting in a guarantee a bond of some description? A. Yes. The first set of lease conditions, the ones I was talking about which we were negotiating on, required £10,000 I think was the figure guarantee deposit. This was one of the conditions.

Q. Perhaps I can help you refresh your memory about it.

HIS HONOUR: I think in the letter of 25th July there are two rates of £5,000.

MR. MILNE: Q. Would you look at the letter of 2nd July? A. Yes.

Q. Is that the letter to which you refer?  
A. Yes.

Q. Two lots of £5,000? A. No, it was one or the other. 10

HIS HONOUR: It is referred to twice, but one or the other.

MR. MILNE: Q. One or the other? A. It is £5,000.

Q. Then did you do something about that and I show you reply of a letter of 18th August, 1958, from you to the Mines Department? A. Yes.

Q. That is your own hand, isn't it? A. Yes, it is.

HIS HONOUR: Q. I think that on 24th September the Department told you that they would not vary the amount of the guarantee? A. Yes. 20

MR. MILNE: Q. So at some other stage were you compelled to pay the guarantee? A. When we accepted the lease conditions we had to lodge the guarantee which we had agreed to. We duly did it but it was very much later on, just prior to the ---

Q. Did you I think by letter of 10th November, 1958, to the Under-Secretary say that you would accept the conditions? A. Yes, we did. 30

Q. And that was over your hand? A. Yes.

HIS HONOUR: Q. You have a file in front of you. The next letter, the documents in Exhibit 7, is one dated 18th January, 1967, to the Shire Clerk. There is nothing further in the file then at all after that letter of November 1958 between the Department and your company. And the lease itself was not granted until --- A. 1967, February, I think.

Q. I thought it was that, but I just don't see the date. Anyway it was in 1967 apparently. Had anything to your knowledge been happening so far as the company was concerned in that whether in 40

relation to the Department, had you been satisfying some request or getting something, or just delay in the Department? A. No, we are obliged to furnish the result and explain and assays and so on. But in the case of a lease application or a similar application no such obligation exists. This is because the Department are interested in the existence of mineral deposits. It has got the date outside, 22nd February, 1967. The prospective results give there the reserves in the State. Thereafter they are not particularly interested in developmental drilling to work these reserves with a particular plant or something like that. So there is no requirement in the department. When the lease issues there is the necessity for suspension of labour conditions.

10

MR. MILNE: Q. Amalgamation and things of that nature? A. Yes.

Q. In any event, it was not until 1967 that you finally got your lease of ML.44? A. That is correct.

20

Q. Can you tell his Honour, give his Honour any reason that you know of why the Department took so long to issue that lease? A. Well, the rutile boom which coincided with the demand for titanium in America in 1955, 1956 led to the mushrooming growth of rutile mining companies along the east coast to the extent where there were upward of thirty companies between Sydney and Brisbane in 1957. These thirty companies were all trying to secure reserves to guarantee their future and there were hundreds, virtually hundreds of prospectors like Mr. Nicolle who always hoped to sell them to operating companies, who pegged areas. The competition for leases was very keen, the number of people involved was very large and the system which the Mines Department had operated unsuccessfully up until that time, a system of mining Wardens being the local Stipendiary Magistrates, became completely bogged down with these applications.

30

40

It was not uncommon to have twenty applications on a single piece of land, and in order to very carefully inquire into all the priorities they did not reject applications until they had dealt with the ones ahead in time, and both the Wardens Court system and the Mines Department itself was buried under this flood of activity and they took a long time to process them.

Now if you wanted one specifically because you wanted to put plant on it and work it then you

50

could take steps by representation to the Department to get that one heard, within reason. We did not personally want this reserve to work at the time, so we took no steps to have it speeded up in the general system.

Q. Did you do anything at all to slow it down?

A. I don't think so. I don't think that was necessary. You could say that our negotiation of conditions slowed it down, certainly it did, but this was quite normal. 10

Q. Was it normal in those years to take a lease ten years to issue a lease? A. Yes, I think that if I went through our records right now I could find certainly some authorities to enter and authorities to prospect dated 1956 and 1957 that still are not processed in 1972.

Q. You still have not got them? A. Yes.

HIS HONOUR: Q. I see that the term dates from the grant of the lease? A. Yes. 20

Q. So that if you really wanted it for a reserve you did not hurry up? A. Yes.

Q. Until the time comes when you want them?

A. Yes.

MR. MILNE: Q. Then it was necessary about 1968/69 that you commenced to carry out much more intensive drilling? A. Yes.

Q. And that I think involved some 66,000 odd feet of drilling? A. It did.

Q. And I think there were something like 13,000 samples taken? A. Yes. 30

HIS HONOUR: Q. How deep were those samples, were these ones just twenty-odd feet? A. Some of each. There were some deep ones for specific targets, but a lot of them were still below, holes twenty-five or thirty feet.

Q. Those are the ones also shown within Exhibit 5 said to have taken place between July 1968 and June 1969? A. Yes.

MR. MILNE: Q. What was the next thing that happened in respect of ML.44? Were there any discussions for example with the Public Works Department? 40

A. Yes. The Public Works Department was looking at that time for a sewerage treatment plant site, a suitable soakage area associated with it.

Q. That is for the fillage of Norah Head?

A. Yes. That community to the north of ML.44 presumably, progressively would break into use for a bigger and bigger area. They would be wanting to see if we would give the rest of the land, alternatively if we were prepared to modify our mining project; so that we worked through this area quickly and realised a situation arose; and thirdly, if we could have a sort of combination of those two things whereby we exercised a certain amount of demand for some of the installation but would be subsequently allowed to mine through some of their soakage areas if we so desired.

10

Q. Did officers of the plaintiff company take part in any of those discussions? A. I imagine - (Objected to). I don't know.

Q. Did you take part in any of them yourself?

A. No, I did not take part.

Q. That was Mr. Wells? A. Mr. Serman and Mr. Wells, yes.

20

Q. Do you know anything about arrangements for access roads, power, telephones and water supplies, or were they matters dealt with by Mr. Wells?

A. They were dealt with by Mr. Wells.

Q. During the years between since you have had this area only has there been carried out correspondence which has passed between your company and the company pertaining to your mining operations and your proposed mining operations? A. Yes, there has.

30

Q. Can you identify the file in which that correspondence appears? A. Can I identify the filing?

Q. Your file in which it appears? A. I imagine so, yes. I can come down there.

Q. Perhaps if I give it to you. I am sorry, you will have to come down. (Witness leaves box.)

HIS HONOUR: Would you step down from the box and see if you can find that.

Q. Did you at any time ever in 1961 have brought to your attention by a newspaper advertisement or in any other way the fact that there had been some town planning step taken in respect of the land in the Shire at Wyong? A. I don't remember it having been drawn to my attention.

40



Q. When did you first become aware that there was a planning scheme for Wyong? A. Following the promulgation of the order itself, sometime - the developmental - not during the lifetime of the interim development order, but some time after that.

HIS HONOUR: Q. Do you mean when the scheme was prescribed? A. Yes, when it became a prescribed scheme they issued maps and so on showing the green areas, open space and recreation, and so on. That is when I became aware of it.

10

HIS HONOUR: When was it, Mr. Wilcox?

MR. WILCOX: May 1968.

MR. MILNE: Q. Have you ever, you or anybody else in your company, or the Board of which you are a member, ever evinced any intention to abandon or give up your rights to ML.44? A. No, none at all.

Q. Have you always had some intention about it?  
A. Yes.

Q. What has that intention been? A. It was regarded as part of the reserves of the company. As I have said, these are quite finite, these reserves. We have a limited life because there is a limited amount of this material available. The intention of course is to work the company as long as you possibly can with the reserve you have, and with supplying your customers with the products. This was just one more lease like a number of others which we regarded as reserves of the company available for working in the systematic manner when the time came.

20

30

Q. Over the years you have told us that you have done a number of things in respect of these leases. Has that cost money? A. Certainly. The cost of just administering this whole group of leases, the cost of looking after labour suspensions and amalgamations, attending Wardens Courts for these inquiries, and making rental payments, and making - all the things that go to administering upward of 200 leases, I suppose we hold. This would be a part of that job. It requires a full time staff in Southport, a lease officer assisted by a clerk and helped by a legal officer to handle the whole lot, and this is just one typical one.

40

Q. Have you any idea of what the drilling on 44 cost? ---

MR. WILCOX: Q. Perhaps it could be broken up?

A. I have a fair idea in that I know that at the time I joined the company I was interested in the cost per foot of drilling, the all-up cost per foot of drilling, and it was running at more than £1 a foot. This includes all the assaying and all the other ---

HIS HONOUR: Q. In 1957? A. Yes.

Q. You say in 1957 the all-up cost including the method you referred to, was about £1 a foot? A. Yes. 10  
3,000 feet of drilling on that initial programme would have been of the order of £3,000. If you take the later major programme of 66,000 feet in 1968-1969 the drilling costs by that time had been reduced to somewhere between 90 cents and a dollar a foot, in other words, rather less than half the cost because we were doing so much more and had better equipment and so on. So that the valuation for the rest of ML.44 would be of the order of \$60,000.

Q. \$60,000? A. Yes. 20

MR. MILNE: Q. Apart from that, you have had payments of rent to the Council? A. Yes. The rent on ML.44 is \$269 a year, I think - this sort of figure. And rates payments to the Council. I forget the figure of this particular lease; but we have done this through the years.

Q. And then of course you have not yet commenced any mining operations on 44? A. Well, the developmental drilling which you referred to, the big programme of 1966-1968 as far as we are concerned is a mining operation, for the simple reason that you only undertake that detailed cross drilling when you know which plant you are going to commit to that area. 30

HIS HONOUR: Q. I thought you said - I may be wrong - the brown lines were the 1968 ones? A. Yes. That step, when you know which of - in our case 12 plants - is going to operate in an area, and the plants vary in size from a capacity of 40 tons an hour up to 1200 tons an hour, so that there is a very big difference in the size of them, consequently there is a very big difference in the amount of ground that each of those plants can work profitably. A large plant with a very big through-put can work far more of an area than a small plant. But having decided, having programmed your 12 plants over the one year five years, ten years and so on, having decided what plant is going to move into that area, then you can do your detailed drilling to give you detailed dredge paths for that area. 40

MR. MILNE: Q. When was it that the move - there is plant on 44 now? A. Plant 20 has been constructed on ML.44.

Q. But it has never actually been in operation?  
A. No, it has not.

Q. When did you commence to construct it on 44?  
A. I think it was about June 1971.

Q. And prior to constructing it there, had you given any specific notice to the Council of what you were going to do? A. Well, in 1967 this area was the subject of a visit from the Minister for Mines and the Minister for Lands at the representation of Mr. Jensen, the local M.L.A., and various conservation interests. 10

Q. I take it Mr. Jensen was supporting you?  
A. Supporting me?

Q. Supporting the mining operations? A. Certainly not, no.

Q. Not the same gentleman? Who is Mr. Jensen that you speak of? A. He is the local M.L.A. for the Wyong Electorate. 20

HIS HONOUR: Q. Same person who used to be the Lord Mayor? A. Yes.

MR. MILNE: Q. Do you know his signature if you saw it on a document? A. No, I would not.

Q. At any rate, you say he was there, and the Minister for Mines was there, and somebody else?  
A. Yes, the Minister for Lands. That was Mr. Lewis. And the Minister for Mines was Mr. Fife. 30

Q. What about Council members? A. I believe there were Council Members there. I don't recall precisely. There was a great number of members of local conservation groups.

Q. (Approaching.) You do not recognise the signature of that Mr. H.F. Jensen there, do you?  
A. I don't, but H.F. is the same initials.

Q. This was 1967, was it? A. Yes.

HIS HONOUR: Q. Was that before the grant of the lease or after the grant of the lease? A. That was in November 1967, so it would have been after the grant of the lease. And the outcome of that was that the company on the representation of the conservation interests agreed to have a look at 40

their lease areas which they held, with a view to relinquishing some areas for reservation by the Lands Department. The conservation groups on their part were to compile a botanical map of the area, which showed what they would like preserved. The two maps, one showing what we considered were areas we were preparing to relinquish, and the one showing the various vegetation types, were submitted to the Minister for Mines and the Minister for Lands, and we then proceeded to the stage where finally - we made a condition, we said we would give up this 200-odd acres on condition that we could regard the rest of our areas as being secure - we would not be constantly having to defend them for one reason or another. The Minister for Mines, presumably in conference with the Minister for Lands, eventually agreed to this, and took steps to have the area that we had agreed to excise surveyed. This has been done in the last six or eight months, I suppose.

10

20

MR. MILNE: Q. That is not what I am asking you about. A. The step that followed this meeting was that we were then able to say "We are now going to work these leases in the following manner".

Q. Who did you tell this to? A. We told this to the Minister for Mines and to the Wyong Shire Council.

HIS HONOUR: Q. Is this in a letter or orally? A. No, this is a letter with plans indicating the method of operation.

30

MR. MILNE: Q. Do you recollect whether that was one of the letters tendered before this Court on the interlocutory proceedings? A. I do not recollect.

HIS HONOUR: There certainly was some reference to it in some of the correspondence, but I do not recollect whether this particular letter was in it.

MR. MILNE: Q. At any rate, whatever was said in it was said in the year 1967? ---

HIS HONOUR: Q. November 1967 was the date of the meeting on the land? A. Yes, and we moved - it is a 10/10 plant to the road, somewhere in 1969. Somewhere between those two dates was when we forwarded this letter showing our intent to move plant 10/10 onto the lease, and also showing an intent to move plant 20 onto the northern end of ML.44 in 1971, and in fact giving our general programme to the Council and the Department. Now at the same time I want to - about the same time I went to a Council meeting and answered various questions on what we intended to do.

40

50

Q. When is this time? A. This would have been in 1969, I would think. I attended a Council meeting.

MR. MILNE: Q. How did you come to be at a Council meeting? Did they invite you to go there? A. I understand they lost the first set of plans, and they asked us to submit another set of plans and also to go and explain them to the Council.

HIS HONOUR: Q. These are what I might call the conservation plans? A. No. These were our intended mining operation, which took notice of the fact that we were going to give away this central 200 acres. 10

Q. But it was the plans which had been developed as a result of the discussions in November 1967 and subsequent negotiations? A. Yes.

Q. Under which your company came to some position about an area of approximately 200 acres? A. Yes. 20

Q. And also in association with that, your mining plan? A. Yes.

Q. You had given those plans to the Council, you say? A. Yes.

Q. And they had lost them, and they asked you for further copies? A. Yes.

MR. MILNE: Q. This was sometime towards the end of 1969, was it? A. Yes, it would have been. The second set would have been towards the end of 1969, and my visit to the Council would have been then. 30

Q. When was the first set? A. The first set was between November 1967 and June 1969.

Q. You moved your 10/10 plant to the southern lease? A. Yes.

Q. In about June 1969? A. In June 1969 we had constructed it on ML.42.

Q. Did you ever between June 1969 and the commencement of these proceedings have any complaint from the Council about what you were doing? A. We had various remarks. We talked to the Council a great deal on matters of provision of ovals, and provision of roadways, and one thing and other. I think it is fair to say that certain Councillors anyway, while they were quite happy for us to 40

J.B. McKellar, x

operate at Munmorah and east of the road where the 10/10 plant was, were not so happy about our operations on the west side of the road.

Q. Did they ever tell you that you had no consent to operate the 10/10 plant at all? A. No, they did not.

Q. Did they ever ask you to close it down?  
A. No, they did not.

Q. This is on ML.42? A. Yes. 10

Q. At any time between when you gave them the prognostication that you would be putting your plant on 44 in 1971, did the Council ever say to you, or any of the members of the Council, "You have to get some sort of development permission first"? A. No, they did not.

Q. I want you now to direct your mind ---

HIS HONOUR: Q. Before we do leave ML.44, you referred to the 1968-1969 drilling. On Exhibit 5 it says that commenced in July 1968 and was completed in June 1969. Does that agree with your memory? 20  
A. Yes.

Q. On this plan there shows that in March 1970 there was some further drilling of altogether 12 holes on ML.44 and five holes on ML.51. Do you recollect those at all? A. Those in fact were the sewerage treatment ones on that side.

Q. And also in September 1971 eight holes were drilled on the western half of ML.44? A. Yes, that is a very high dune, and the previous holes, even the developmental holes of 1968/1969, had not penetrated the full thickness of the sand in that area, and we put in a special power drill in order to get very deep sands. 30

MR. MILNE: I had intended to interpose an Interstate witness with permission.

(Witness stood down.)

SYDNEY JOHN GRIFFITH

Interposed:

Sworn, examined, deposed: 40

TO MR. MILNE: My full name is Sydney John Griffith. I live at Becks Road, Freemans Water Hole, near Newcastle.

J.B. McKellar, x,  
stood down

78. S.J. Griffith, x

Q. You have come down here from Inverell?

A. Yes.

Q. Are you employed there at the moment? A. I am working as a consulting mining engineer in Inverell.

Q. Have you some academic qualification?

A. Yes, I am a Bachelor of Engineering from Queensland University, in Mining.

Q. Between 1962 and 1967 were you the manager of Wyong Minerals Limited? A. That is correct. 10

Q. One of the subsidiaries of Wyong Minerals at that time was Wyong Alluvials Pty. Limited? A. That is correct.

Q. I think Wyong Minerals was formed as a public company in about 1959? A. Yes.

Q. And at that time it had some leases at Tuggerah? A. That is correct.

Q. When you joined the company they also had some leases at Munmorah, and a dredge was operating there in 1962, and a treatment plant? A. That is correct. 20

Q. And in 1962 although the Tuggerah leases - you had titles to them, they were not being worked? A. Not being worked at that stage.

Q. But there had been, I think, some programmes to establish the amount of mineral that those three leases contained prior to you going there?

A. There were records in the office of drilling and assessments done in the late 1950's. These I presume were done partly in relation to the floating of Wyong Minerals as a public company. 30

HIS HONOUR: Were these areas identified with any of the mining leases we are concerned with?

MR. MILNE: Yes, the three southern ones.

HIS HONOUR: 42, 48 and 51?

MR. MILNE: Q. Yes. When you went there, did you see amongst other things that there had been some work done on an area at Tuggerah by a Mr. Close?

A. Mr. Close was one of the early directors of Wyong Minerals, and he had associations with Wyong Alluvials, and I believe that he was one of the people instrumental in the early drilling of that area. 40

Q. Mr. Close being himself a geologist? A. No, he is a mining engineer, so I understand.

Q. (Approaching.) Is that part of the record you had when you were there in 1962? A. Yes.

(Record tendered; objected to and m.f.i. 1),  
being 1957 plan of Tuggerah areas.)

Q. Had you also when you went there had before you some material that had been prepared under a Mr. Nolan? A. Yes.

10

Q. (Approaching). Will you look at this plan? Is that a copy of the plan that you had in front of you? A. Yes, I presume so.

(Mr. Nolan's plan tendered; objected to and m.f.i. 2.)

Q. While you were there was a decision taken as to make further examinations of these three southern leases? A. That is correct, yes, not in the first several years but ---

Q. Do you remember what was done about it?

20

A. Yes, there was some work done by Associated Minerals in the northern part, which covered their own area. They had Mining Lease 44 which was north of the Wyong areas. Then a drilling campaign was started about 1964 to cover the whole of our Wyong leases.

Q. When you say "our leases"? A. Wyong was then a separate company which was merged with Wyong Minerals in 1967.

Q. Your leases being to the south of ML.44?

30

A. Yes.

Q. Do you remember their numbers? A. 51, 48, I think 42.

Q. Would you describe - this was in 1964?

A. About 1964.

HIS HONOUR: Q. That is when it began? A. This is the actual drilling campaign.

Q. It began then? A. Yes.

Q. It was not all done in 1964? A. No, it was carried on over most of the rest of the years I was there. It started with holes about 1,000 feet apart, and then started to fill in.

40



MR. MILNE: Q. I beg your pardon? A. We started drilling holes about 1,000 feet apart, or lines of 1,000 feet apart, and then put further lines in between at a later stage.

Q. Were there logs kept of these drillings?  
A. That is correct.

Q. For how long did that drilling go? ---

HIS HONOUR: Do you mean over what period?

MR. MILNE: Q. What period? A. From memory, right till when I left, about the period I left. 10

HIS HONOUR: Q. They were still going when you left?  
A. Yes, from memory they were still going when I left.

Q. You did leave in 1967, did you? A. Yes.

MR. MILNE: (Approaching.) Q. I want to know whether you recognise the first bore drill log that I show you? A. I recognise the writing. This is W. Shea writing, the man in charge of the drilling.

Q. Is that his signature on the bottom? 20  
A. That would be his signature.

Q. I do not want you to go through the whole lot of them, but do you recognise, for example, the next signature, Mr. Kelson? A. At one stage we had two drills working in that area. He was a driller.

Q. Do you recognise those signatures there as being employees while you were there? A. Yes, and I recognise the writing on the calculations.

Q. Whose is that? A. It is an engineer we had working for us, by the name of Camburg. 30

Q. I do not want to take you past when you left, but would you agree that those records show that during the period that you were there, drilling took place between 1st September 1964 and 20th December 1966? A. Yes, that is correct. That would be my initials.

Q. Your initials, is it? A. Yes.

Q. And those are in relation to ML.48, are they? (withdrawn). You cannot tell? A. No, without seeing the plan I could not tell exactly where they were. 40

Q. You see they have 48 marked on them. Is that your writing? A. No, that is not my writing. I would not know exactly where they were.

MR. MILNE: I am including in this tender the tender of a number of logs for the year 1969, about six of them, but if that is subject to objection I would have to withdraw it.

MR. WILCOX: I have no objection to the bore hole logs which relate to the period when this witness was employed, but I do object to 1969. I am frankly wondering why it is being tendered. 10

HIS HONOUR: Mr. Wilcox, I appreciate you claim it is irrelevant, but if it were proved I would admit it subject to relevance; but if it be put in on that basis, if they do appear to be records duly kept of drillings, it seems to me a reasonable thing to allow them to go in, unless you have good reason to want to cross-examine somebody.

MR. WILCOX: I withdraw my objection, and could they go in as separate exhibits? 20

(Bore hole logs in respect of mining lease 48 in the period 1st September, 1964 to 20th December 1966 tendered and marked Exhibit 10.)

(Bore hole logs in respect of mining lease 48 in the period 22nd November to 12th December 1969 tendered and marked Exhibit 11.)

MR. MILNE: Q. Would you look at the next file of documents that I show you, and tell me what they represent? A. Yes. They were not produced by Wyong Minerals. They probably represent the drilling done by Associated Minerals at the top end of Tuggerah. 30

Q. Can you tell us whether they do or whether they do not, by looking at them, or would you have to have a map to assist you? A. No, I could not tell you.

Q. Will you look at the second document and see if there is anything that helps you in that? Without looking at a map, can you tell me what they are about? A. These are drillings carried out after I left the company. I don't know. 40

Q. Will you now look at this bundle of documents? I do not want to undo them, but you see

they are dated from 30th September 1964 through to 2nd August 1966? A. Yes, I recognise the writing of J. Shea and Harding, and they are of Wyong Minerals bore hole log.

Q. They are each marked ML. 42? A. Yes.

Q. Are they bore hole logs for borings done on ML. 42 between those dates? A. I could not guarantee they are on ML.42, but they purport to be.

Q. There is another bundle of documents commencing on 2nd May 1969 to 6th February 1970. You were not there then? A. No, I was not. 10

MR. MILNE: I tender them all on the same basis.

(Bore hole logs in respect of ML.42 from 20th September 1964 to 2nd August 1966 tendered and marked Exhibit 12.)

(Bore hole logs in respect of ML.42 from 2nd May, 1969 to 6th February 1970 tendered and marked Exhibit 13.)

Q. I have not shown you any bore hole logs for ML. 51. Do you recollect whether they were kept the same as they were in 42 and 48? A. Yes, they would have been written out the same way. 20

Q. Have you seen them since, or not? A. No.

Q. When did you start to dredge on either of those southern leases, 42, 48 and 51? A. No actual dredging was done at the period that I left. About 12 to 18 months before I left we had designed our dredge paths.

HIS HONOUR: Q. 12 to 18 months, did you say? A. Yes. We went into designing the dredge in conjunction with a firm called G.H. & J.A. Watson. A dredge was designed, and negotiations, including the contract for construction, was about to be signed when the merger between Associated Minerals and Wyong Minerals took place. 30

MR. MILNE: Q. Do you remember putting down a power line running down the Wilfred Barrett Drive while you were there? A. I do.

Q. That is down the street? A. This is done following the road down through the Tuggerah leases. To get power to the southern area we had to provide the power line. The Brisbane Water County Council agreed they were keen to get an alternate circuit to The Entrance. 40

HIS HONOUR: Q. Where was the power line? A. Following down the road from the northern end of the village of ---

Q. I show you Exhibit 1. A. From Norah Head. It followed that road right down.

Q. Along what is called the main road? A. Yes, to join up with their electricity supply at The Entrance.

Q. Would it go south of ML.42, for example?  
A. Yes.

10

Q. Right along to the bridge? A. Yes. We applied to have it put in to the southern area where we were going to start mining, but they wanted to join it with The Entrance, to have an extra circuit, so they paid part of the cost, and we paid the rest of it.

Q. Did they put it in and you paid, or did you put it in and they paid? A. No, they put it in and we paid.

20

Q. You paid Brisbane Water County Council?  
A. That is right.

MR. MILNE: Q. While you were there did you ever from time to time see in this general area the President and Councillors of the Wyong Shire Council? A. I did.

Q. And officers of that Council? A. I did. This is in relation to the Tuggerah areas, yes. When our mining was well developed, our programme for mining, I did discuss it with Council officers, and I attended a meeting of the Wyong Council in which I took a plan and showed them where we were going to mine, and also showing them a large area in the centre - I just forget how much - which we proposed to leave out of our mining programme.

30

Q. When would that be approximately? A. It could have been 1966.

Q. Did you ever attend any formal function for the opening of any dredges in the Munmorah area, at which the President and all the Councillors were guests? A. That is correct. When we commissioned the second dredge at Munmorah area we had an opening, to which we invited the Councillors along to see the plant and discuss the mining operation.

40

Q. On that occasion were the proposed mining

operations on the southern leases - that is the Tuggerah leases - discussed? A. I believe it was. Our programme was to get Munmorah established and then move into the Tuggerah areas.

HIS HONOUR: Q. But do you recollect anything about the discussion about the Tuggerah leases?

A. At that particular meeting I cannot remember that it was discussed, but our overall programme was put forward to the Council.

10

Q. At that meeting? A. From memory there was a publication printed which was issued to Council - that we gave to the Councillors. This gave the history of the company and the operation of the company, and what our future proposals were.

Q. In detail or just - is this document available?

MR. MILNE: Q. You gave a copy of that document that you spoke of to the Council? A. To the Councillors, yes.

20

Q. To each of the Councillors? A. Yes, well, it was a visit to the plant to inspect the plant and show them what we were doing in the way of mining.

Q. Is that the document that you refer to? (Shown to witness.) A. Yes, it looks like it.

Q. Do you remember that you said it referred to future plans? Do you remember that? A. Yes.

Q. On page 3? A. Yes.

Q. Does it show a plan of the Tuggerah leases on the back page? A. That is correct.

30

Q. Did any of them suggest to you when you gave them this document - I tender that - that you needed some sort of consent for the Tuggerah leases? --

(Document printed by Wyong Minerals Limited tendered and marked Exhibit 14.)

Q. Either before that publication or after that publication, did any member of the Council or officer of the Council ever suggest to you as the manager of that company, that you had to have any consent from the Council to mine those Tuggerah leases? (Objected to; allowed.)

40

Q. Do you remember the question? A. Yes. No

Councillor told me, or suggested that we would have to get permission to start mining.

CROSS-EXAMINATION:

MR. WILCOX: Q. Was one of your directors of Wyong Minerals during the period you were associated with it a Mr. Aubrey Brown? A. Yes.

Q. And he was a solicitor, and still is a solicitor? A. As far as I know, yes.

Q. He had lived in the Wyong area to your knowledge for many years at the time you joined the company's service in 1962; is that right? A. Yes. 10

Q. And he had been associated with the formation and expansion of Wyong Minerals ever since the birth of that company? A. Yes.

Q. And he remained on the Board during the whole of the period of your employment? A. That is correct.

HIS HONOUR: That is with Wyong Minerals?

MR. WILCOX: Q. Yes. A. That is right. 20

Q. These various bore logs that have been identified by you were records of drillings made by employees of Wyong Minerals, in order to take assay samples of the material below the surface of the ground; is that right? A. That is correct.

Q. And the purpose of this was to take a small sample of the material, and to ascertain whether it contained any heavy minerals, and if so, in what proportion, at a particular location; is that right? A. That is correct. 30

Q. It was purely a prospecting exercise to find what was there? A. No, I could not agree with that. We were looking at planning a dredge path, looking to see where we were going to start mining, and we were looking for more detailed information so we could assess that position.

Q. The purpose of what was done was to find out what was there, and where it was, so that you knew which area should be dredged, and you could plan your dredge path? A. That is correct, to plan our dredge path. But there was no doubt in my mind that it would be mined. 40

HIS HONOUR: Q. Were these holes also bored by a

three-inch auger? A. Yes, in the northern area by Associated Minerals.

Q. But the physical instrument was a three-inch auger? A. Yes.

MR. WILCOX: Q. You referred to a power line which was put along Wilfred Barrett Drive. When you say that your company paid for the line, you do not suggest that the company paid the whole of the cost, do you? A. I did not say that. I said that we applied to the Council to get power put on to the southern areas for the dredge. The Brisbane Water County Council were keen to have an extra line to The Entrance area, and so it finished up their extending the line, and we undertook to pay half the cost. 10

Q. You paid half the cost? A. Yes.

MR. MILNE: I have no questions to ask in re-examination. 20

(Witness retired and excused.)

(Further hearing adjourned until 10 a.m. on Wednesday, 23rd February, 1972.)

IN EQUITY

No. 2083 of 1971

CORAM: HOPE, J.

WYONG SHIRE COUNCIL v. ASSOCIATED MINERALS  
CONSOLIDATED LIMITED & ANOR.

THIRD DAY: WEDNESDAY, 23RD FEBRUARY, 1972.

FRANK ARCHIBALD CLOSE

Sworn, examined, deposed:

TO MR. MILNE: My full name is Frank Archibald Close. I live at 28 Belmore Street, Surry Hills.

Q. You have been engaged in the mining industry for some 30-odd years? A. Yes. 10

Q. You have a degree in Mechanical and Electrical Engineering at Sydney University? A. Yes.

Q. You have had that degree for many years?  
A. 36 years.

Q. Your experience is that you have spent a number of years in Malaya dealing with alluvial mining of various descriptions? A. I worked in Malaya for a subsidiary of a London company for four years.

Q. You had a great deal of experience - I do not want to go through the lot of it - in alluvial mining of various sorts throughout Australia? A. Yes. 20

Q. I think you are familiar, very familiar, with the sand mining deposits in the central coast area of New South Wales? A. I am indeed.

Q. I think you were directly concerned, either on the Board or as a consultant, with a group of companies with various names, with Wyong as a prefix, for a number of years? A. Yes, Wyong Rutile, Wyong Alluvials Pty. Limited, Wyong Minerals Limited. 30

Q. Indeed, I think at one stage you were on the Board for many years, weren't you? A. Yes.

Q. I think you are familiar in particular with three leases at Tuggerah that were at one time owned by one of Wyong companies? A. Yes.

Q. They are now numbered 42, 48 and 51. Did you know those numbers or not? A. No, I did not know those numbers.

HIS HONOUR: Q. Can you see this Exhibit 1?

A. Yes. 40



Q. Are they the areas I show to you? A. Yes.

MR. MILNE: Q. In the year 1957 I think you were directly involved as a consultant in respect of those three leases? A. The areas that those three leases occupy.

Q. You had I think at that point of time engaged the services of a man called Mr. Berryman to supervise the field work that was to be done?

A. Mr. Berryman was in my employ at the time when I allocated him to that job. 10

Q. He was a man I think that had a great deal of experience in boring and drilling? A. Yes.

Q. I think the situation was that under supervision Mr. Berryman did a series of drill holes in that area? A. Yes.

Q. Later on, I think we have been told already how it has been done - by a hand auger, and it is done in various sections. The samples are collected and they are put into bags and are sent away to be assayed. Is that the way it is done? A. On this occasion the samples were split and washed on the site, and sent away for weighing. Assaying was only done on a total composite sample at the end. 20

Q. You were present personally yourself I think when a number of these holes were put down, and the trepanning processes took place? A. I was present during the actual drilling of about 15 of the holes.

Q. When they were taken away and weighed, and mineral counts taken of them? A. Yes. 30

Q. That was done by a man called Mr. Gordon Gabriel who was formerly a Chief Inspector of Mines? A. Yes.

Q. And was a very experienced metallurgist? A. Yes, extremely experienced metallurgist.

Q. Then did you plot an area yourself? A. Yes.

Q. That was about 34 million yards? A. Cubic yards, yes.

Q. Did you then prepare, or have prepared under your supervision, a plan showing the positions of the holes and making an assessment of the value of the area? A. Yes. 40

Q. (Approaching). Would you look at the document I now show you? Is that the plan? A. Yes.

Q. Is that a print of the plan? A. Yes.

Q. Is that signature at the bottom of it your signature? A. Yes, that is my signature.

Q. Is the one above it a gentleman called Mr. Oliver? A. Mr. Paul Oliver.

Q. Who was the general supervisor of it?

A. Yes.

Q. Does that plan give details of the holes and of the quantities of mineral that it contained? 10

A. Yes.

(Plan prepared by Mr. Close, previously m.f.i. 1, tendered and marked Exhibit 15.)

HIS HONOUR: Q. There are on this plan various dots with figures near them, such as 28, 27 and so on. Are those dots the position of drill holes? A. Yes, they are the position of drill holes. The numbers are the depths in feet.

Q. Would you look at the plan which is Exhibit 5? It is not suggested you prepared that plan, but you will see that there is a legend at the bottom right-hand corner showing dates and symbols and so on? A. Yes. 20

Q. You see that it has in respect of the period September 1957 to December 1957, and in respect of mining leases 51, 48 and 42, two sets of drill holes indicated? A. Yes.

Q. Are those the drill holes that you have referred to, and are they the ones which are shown on Exhibit 15? --- 30

MR. MILNE: May I amend your Honour's question - are they "Some" of the drill holes?

HIS HONOUR: Q. I will rephrase the question. Is what is shown on Exhibit 15 some of the drill holes which are shown on Exhibit 5? A. They would be marks representing sites near the drill holes that you have referred to.

Q. During that period, that is September 1957 to December 1957, any drilling that was done on the area was done with your knowledge? A. Yes, done with my knowledge. 40

MR. MILNE: Q. After you had done your work, I think you then took some part in purchasing this area on behalf of Wyong Alluvials? A. I recommended

the purchase be completed, and that the £20,000 be paid to Jennings.

Q. £20,000 paid to the people who then had the titles? A. Yes.

HIS HONOUR: Q. That assumes your company had some kind of option? A. Yes, the company had an option for which they paid £2,000 at the time the drilling was done.

MR. MILNE: Q. So the option was exercised? A. Yes.

10

Q. And the areas were then bought for a sum of £20,000? A. Yes.

CROSS-EXAMINATION:

MR. WILCOX: Q. There are apparently about 38 holes drilled at that time in September 1957? A. Yes.

Q. That would be about right, would it? A. Yes.

Q. Spread over what are now the three different mining leases? A. Yes.

Q. The purpose of the drilling, I take it, was to ascertain whether there were heavy minerals in the area proposed to be purchased, and where the minerals were located, and of what grade? A. Yes.

20

Q. Your company at that stage had in mind purchasing, and wanted to obtain some knowledge of the material under the surface of the soil, to decide whether or not it was wise to purchase? A. Yes.

MR. MILNE: I have no questions to ask in re-examination.

(Witness retired and excused.)

30

RICHARD CHARLES NOLAN

Sworn, examined, deposed:

TO MR. MILNE: My full name is Richard Charles Nolan. I live at 13 Edith Street, Waratah.

Q. I think you are at present a mining engineer employed by a company called Rutile and Zircon Mines, Newcastle Limited? A. Yes.

Q. You are a Bachelor of Engineering, Mining and Applied Geology, University of New South Wales? A. That is right.

40

F.A. Close, x, xx,  
ret'd.

Q. When did you obtain that degree? A. I completed the course in 1955, and the degree from the beginning of 1956.

Q. Ever since then I think you have been employed as a mining engineer with one or other of the Rutile Mining companies operating in Australia?

A. That is right.

Q. And you still are so employed? A. That is correct.

10

Q. In the year 1957 you were put in charge of an exercise by your then company, which was Coffs Harbour Rutile, to examine the viability of an area at Tuggerah? A. That is right.

Q. You then had in front of you a document and a plan prepared by the last witness, Mr. Close?

A. That is right.

Q. (Approaching.) You might take it, this is Exhibit 15. Is that the document you have in front of you? A. Yes.

20

And I also had a plan of about the same scale as the one I have brought with me.

HIS HONOUR: Q. You had a larger plan? ---

MR. MILNE: Q. A larger and a more detailed plan?

A. Yes.

Q. At that time I think Coffs Harbour Rutile were interested in assessing the area for the purposes of themselves buying it? A. That is right.

Q. You had a team of men go down there to do some drillings on it? A. Yes.

30

Q. I do not want you to tell us what they did, but your foreman was a man called Mr. Eggins?

A. That is right.

Q. And he went down there with a man called Mr. Berryman who had been with the earlier expedition?

A. That is right.

Q. This was done in about the month of December 1957? A. Yes.

Q. Do not tell us how they did it, but what happened was that ultimately the material they got, or the assays of the material they got, came back to you? A. Yes.

40

Q. Then you set about yourself to prepare a plan of the area and to make an assessment of the material that was there? A. That is right.

Q. Have you got in front of you there the original plan that you did? A. I have.

Q. Would you tell me whether the document which I now show you, which was formerly m.f.i. 2, is a copy or a print of your original plan? A. Yes, it is a print of the original plan.

10

Q. Does that plan show both the holes that were put in by Mr. Close's expedition, as well as your own, or does it only show your own holes? A. No, it shows both, because it is prepared to give a comparison, to give a check on the results which had already been obtained by the other driller.

Q. And the results of the reserves are shown on the top left-hand side of the plan? A. That is right.

(Mr. Nolan's plan, previously m.f.i. 2, tendered and marked Exhibit 16.)

20

HIS HONOUR: This explains the two lots of drillings?

MR. MILNE: (Approaching.) Q. I will ask you about that. (With Exhibit 5.) You may assume that this is a composite plan prepared by somebody other than yourself. Can you see in the bottom right-hand corner the legend, some dates and references to mining lease. You may assume for the purposes of what you are about to answer that the mining leases over which you did your work were 42, 48 and 51. It was not 44. You see in the legend so far as 48, 42 and 51 were concerned, there are two lots of markings, orange and yellow, between the months of September 1957 and December 1957. Can you look at that plan and tell us whether the holes, either of the holes depicted yellow or orange, are in approximately the positions of the holes as shown on your own plan, Exhibit 16? Just approximately will do? A. Yes, I would say the orange appears to be the drilling that was done by Mr. Berryman.

30

40

Q. That is under Mr. Close? A. Yes, and the yellow appears to be approximately the check drilling that we did, Coffs Harbour Rutile. The orange appears to be the original drilling Close did, and the yellow is the Nolan drilling.

Q. After that drilling was done you know I think that the area was not taken up by the Coffs Harbour company? A. No.

Q. But did you enter into some negotiations at that point of time to get some idea of the suitability of the sort of equipment that could be used to dredge it? A. Yes, there were discussions both with our then general manager Mr. Miles, who is now dead, and Mr. Jack Watson of G.H. and J.A. Watson, with whom we had been associated in Malaya.

Q. There were discussions with G.H. and J.A. Watson as to the type of dredging plant? A. Discussions of the type of dredging plant that might be suitable for it. 10

CROSS-EXAMINATION:

MR. WILCOX: Q. You were employed by Coff's Harbour Rutile at all times in connection with your interest in this area? A. That is right.

Q. Your job was to carry out certain check drilling and examine Mr. Close's plan so that your company could decide whether or not it was interested in acquiring the rights of the area? A. That is right. 20

Q. Insofar as you did drillings, they were merely to obtain samples for assay to ascertain the minerals which were present, their grade and the approximate position of the minerals? A. That is right.

Q. You made some calculations on the side of the document. I suppose at this time you would not remember what the calculations were, but are these the calculations which you made at the time representing your opinion of the reserves in the area which you had examined? A. Yes, they are. 30

Q. The estimate you have given here of quantities, that is an estimate based on the drillings that had taken place of firstly the number of tons of mineralised sand in the areas you had looked at, and secondly the number of tons of rutile? A. The first one is the number of tons of heavy mineral concentrate.

Q. I think you were aware of the estimates shown in Mr. Close's plan at the time? A. I was. 40

Q. It is fair to say that your estimate was only a little over half of the estimate that he put on it? A. You will find my estimate shows slightly more rutile.

Q. But much less total concentrate? A. I can only go on the figures.

Q. Whatever it is on that plan, compared with what it is on his document? A. Yes.

Q. In the result your company decided not to acquire the area? A. Yes.

MR. MILNE: I have no questions to ask in re-examination.

(Witness retired and excused.)

(Bundles of correspondence with Wyong Shire Council and the defendants, which was formerly Exhibit 9, tendered and marked Exhibit 17.) 10

(Copy records of Mining Department in respect of ML.48 tendered; objected to; admitted and marked Exhibit 18.)

(Copy records of Mining Department in respect of ML. 51 tendered and marked Exhibit 19.)

(Correspondence between Mines Department and Wyong Shire Council tendered and marked Exhibit 20.)

MR. MILNE: I call the State Planning Authority on subpoena duces tecum. 20

(Mr. Adrian Anthony McGlinn, an officer from the State Planning Authority, produced a subpoena to produce some documents.)

MR. MILNE: Q. Do you produce the documents set forth in paragraph 1 of that subpoena?

MR. McGLINN: Not completely. I think I produce the second part, which is a direction given by the Minister for Local Government to the Wyong Shire Council in January 1961 pursuant to s. 342D. 30

MR. MILNE: Do you produce any newspaper?

MR. McGLINN: No.

MR. MILNE: What about paragraphs 2 and 3?

MR. McGLINN: As far as the file is complete, I produce that.

HIS HONOUR: You produce all documents referred to in the subpoena, other than a copy of a newspaper referred to in paragraph 1?

MR. McGLINN: That is right.

(Short adjournment.) 40

JOHN BRUCE McKELLAR  
Recalled on former oath:  
Examination-in-chief continued:

HIS HONOUR: Q. You are on the same oath you took yesterday? A. Thank you.

MR. MILNE: Q. We left it, that you had dealt with ML.44? A. Yes.

Q. I want to leave the other three for the moment, and ask you some general questions. Is it the fact that since each one of these leases were granted, one or other of the two defendants have always paid the rent in respect of them to the Mines Department? A. Yes. 10

Q. And always paid the rates? A. Yes.

Q. Is it also a fact that in respect of each of the leases, the labour conditions on each of them have from time to time been suspended? A. Yes.

Q. And by the necessary proceedings in the appropriate Warden's Court? A. Yes.

HIS HONOUR: Q. What you said was that the labour conditions have always been suspended from time to time. Is that so, or is it simply that at times they have been suspended? A. At times they have been suspended when we have not had a plant operating on it. 20

MR. MILNE: Q. I think there have been amalgamations made? A. Yes.

Q. I think these four leases have been amalgamated in such a way as to make the amalgamations with the Munmorah leases? A. Yes, this process started from early on, amalgamating the Wyong Alluvials lease with the leases at Munmorah, several miles to the north, which had operating plants on them. 30

HIS HONOUR: Q. I have not a copy of the Mining Act here at the moment, and I am not extremely familiar with it. How does that occur where you have different lessees? A. I do not think it does occur where you have different lessees. The ones that we amalgamated progressively were ML. 42, 48 and 51. 40

Q. They had the same lessee? A. Yes - which were transferred to Wyong Alluvials by the various processes before granting, and after the two companies merged it was then possible to amalgamate ML.44, which is in the name of Associated Minerals Consolidated Limited.



Q. With the result that the lease that previously existed, or was currently in existence in respect of ML.44 was now held by the second defendant, Wyong Alluvials, or still held by the first defendant, or what is the position? A. I do not think it was necessary to transfer the ownership.

HIS HONOUR: I just do not really understand, but probably nothing turns on it. But if anything does turn on it, it may appear from the files what it is all about. But I do not quite understand how you do it. 10

MR. MILNE: I want to cover it in a general way. I am having s. 180 turned up.

HIS HONOUR: What is it that is amalgamated?

MR. MILNE: The labour conditions are amalgamated.

Q. From time to time as these leases ran out, did the respective companies make applications for renewals? A. Yes, they did, prior to their running out of course. 20

Q. Prior to their running out? A. Yes.

Q. I think some of those applications for renewals are still current? A. They are.

HIS HONOUR: Q. Would you listen to all this and see whether you assent to these statements. These statements are to be found in the judgment I gave in the interlocutory application and were obtained by me from the evidence then before me. A. I see.

Q. ML.42 had an area of 237 acres less a public road, and was held by Mr. F.B. Jenkins pursuant to an authority to prospect. The lease was applied for on 15th March, 1958, and Special Lease No. 175 was granted on 3rd May, 1961, to persons who were said to be nominees for the second defendant pursuant to some previous arrangement. The lease was for five years. On 14th January 1964 it was transferred to the second defendant. It had been renewed until 3rd May 1971, and an application for renewal was made on 25th May 1970. This application has not yet been either granted or refused? A. Yes. 30 40

Q. ML.48 has an area of 450 acres two roods less a public road. This area was previously held under an authority to prospect by Mr. J.R. Jenkins. He applied for a lease on 15th March 1958, and on 14th June 1961 Special Lease No. 176 was granted to nominees of the second defendant. The lease was for a term of five years, and it was transferred to the

second defendant on 14th January 1963. It has been renewed to 14th June 1971 an application for a further renewal was made on 24th June, 1970, but has not yet been granted or refused? A. Yes.

Q. ML.44 has an area of approximately 578 acres less a public road. It was previously held by Mr. A.F. Nicholl under an authority to prospect for a period of 12 months from 7th December 1955. An application for a lease was made on 30th November, 1956, and Special Lease No. 369 was granted to the first defendant on 22nd February 1967. This lease was for a term of five years, and expires on 22nd February 1972. I think that is all of those facts? A. Yes.

10

MR. MILNE: Q. (Approaching with Exhibit 5.) This document I think was prepared, was it not, for the interlocutory proceedings in this case? A. It was.

Q. And it was prepared under your direction, was it? A. Yes.

20

Q. Starting at the red at the top, the 1955/1956 red, were those red marks placed on there as a result of an examination of the primary material that you had from your own company's drilling for Mr. Nicholl? A. Yes.

Q. And the orange and the yellow in 42, 48 and 51, were those marks put on as a result of an examination of the Close map and the Nolan map? A. They were.

Q. Were the other materials that are shown on this map taken from the other records that the company had in possession of the various other drillings that took place after 1957? A. Yes.

30

Q. And the July 1958, the little brown ones at the top, that was the series of drillings about which you have already given evidence, that was done when the Minister said he wanted to excise the 80 acres? A. Yes.

Q. They were taken from the records about that? A. Yes.

40

Q. And commencing in the 1963 period, they were all records of drillings that had been done by your own company? A. Yes, company or companies.

Q. And those primary records were all records which your company had in its possession? A. Yes.

Q. Do you say that map accurately, as near as

one can on that scale, depicts the sites of all those bore holes? A. Yes.

HIS HONOUR: Q. Sites or lines? A. Yes, only insofar as the lines are entered where the holes are too close to show up on this scale. For instance, that purple line, that distance there is something more than a mile, and if I were to show a dot, or whoever drew this map were to show a dot for every 30 yards, there would be a whole series of dots, so it is only shown as a line. 10

MR. MILNE: Q. And that goes also for all the other continuous lines? A. Yes. The one other thing I could add perhaps is that drilling is still proceeding on this area.

HIS HONOUR: Q. What do you call this area? A. For instance, in the case of the 10/10 plant, which is operating on a dredge path in ML.48 at the moment, some drilling is being done immediately ahead of that operation, and of course some drilling is being done in the tailings that it is producing, because we drill before and after the operation, to give us the balance of mineral. This establishes how much we took out and how much is left after we have mined it, should be to our assessment before we mined it. 20

Q. To test the efficiency of the operation?  
A. Yes, so that while this is a complete general record of the drilling of the area, it is still proceeding, and I think that this ---

Q. Would it be correct to say that Exhibit 5 shows truly prospecting drilling and also some drilling which was carried out in order to be in a position to design dredge paths? A. Yes, the intent of the document was to distinguish between the prospecting cross-system and the more intense drilling as shown by lines. The development drilling shown by lines - the original prospecting drilling which proved the area in each case by some form of cross. 30

MR. MILNE: Q. When did you join Associated Minerals? A. March 1957. 40

Q. When did you first have anything to do with ML.44? A. Almost immediately I was made aware of the fact that this area was - we had put a lease application on it, Mr. Nicholl had nominated us as nominees on that lease.

Q. Have you from time to time been down to this area? A. Yes. One of my initial jobs concerned the prospecting report to the Mines Department. Having had the prospecting report which Mr. Nicholl

sent in, they asked for more detailed knowledge of the assays, the sample-by-sample assays. I produced these, and they were on that yellow squared paper which were included in the back of the bore logs.

Q. (Approaching with Exhibit 2.) You speak of this, on the graph paper at the back? A. Yes.

Q. What is that - or who prepared it, first of all? A. I prepared that, and it shows the location of the bore holes, carried out under authority to prospect 1653. It shows two figures alongside each bore hole, which is the grade of heavy mineral .56, we will say, over another figure which is the depth of the hole, 15 in that case. 10

Q. That means .56 heavy mineral over a distance of 15 feet? A. Yes.

Q. That is a little over half per cent.? A. Yes.

Q. --- of the total mass, is heavy mineral? A. Yes. 20

Q. And that is the significance of that document? A. Yes, in other words it indicates to the geologist in the Mines Department that that is the area, and these are the grades that exist over that area, and he can work out for himself independently from that data, which is all factual, what the reserves are in that figure. He does not ask us to do that calculation presumably because he would rather do it himself.

Q. His Honour asked yesterday - he said that some of the dots had red inside of them and some did not. Is there any significance in that? A. I do not recall a significance to them at this stage. 30

Q. The next draft sheet, is that a record of each of the holes showing the percentages of heavy mineral from each sample? A. Yes.

Q. So that if you take - it gives you the letter of the hole hidden behind here (indicating), and then it shows the first two feet, then 2 to 5, 5 to 10, and over at the side it shows 20, and it shows the average percentage of heavy mineral over the whole lot of those samples? A. Yes. 40

Q. And you prepared that? A. Yes.

Q. That is your initials on it? A. Yes.

Q. The last page is a continuation? A. Yes.

Q. You say that the purpose of this was to send them to the Mines Department? A. Yes.

Q. That is because of an inquiry made of Mr. Nicholl after the original report? A. Yes.

Q. And that was at a point of time when the authority to prospect either was about to run out or had run out, or when you had applied for the lease? A. The authority to prospect had in fact run out, and we had lodged a lease application, and then the inquiry came from the Department, for further elaboration of the results which Mr. Nicholl sent them at about the time he lodged the lease application. 10

Q. That was the first thing you had to do. Did you go with ML.44 --- A. Yes.

Q. Did you go down and on to this site throughout the years from 1957 till now? A. Yes, I have been in that area at fairly regular intervals, much more frequently in the earlier years than I have been of late. I have been perhaps only once in the last couple of years. 20

Q. Have you from time to time been in contact with officers of the plaintiff Council here either by letter or verbally or at meetings? A. Yes, I have.

Q. Was any of those meetings or conversations about these Tuggerah leases? A. Yes.

MR. MILNE: Q. I will come back to that in a moment, but I want to take you through very briefly the history of the bottom lease. The other three leases, 43, 48 and 51 were respectively special lease 175, 176 and 202? A. Yes. 30

Q. Now, 42 and 48 were originally authorities to prospect to the man called Mr. Jenkins? A. Yes.

Q. They were authorities to prospect 156 and 157 and ML.51 was originally an authority to prospect number 186 in the name of Carpenter and Christiansen? A. Yes - I am not prepared to say whether both Carpenter and Christiansen had their names on the authority to prospect, but they worked as a combination and it would have been lodged by one or the other or both. 40

Q. Then in 1957, you have heard evidence and you can verify this if you look at the records, those three areas were offered to, amongst other people,

Wyong Alluvials, the second named defendant in this suit? A. Yes.

Q. And you know from your records of the Close investigation which was done for Wyong Alluvials and of the Nolan investigations? A. Yes.

Q. And you know it indicated what the reserves were, and they were the reserves shown on the Close map? A. Yes.

HIS HONOUR: Q. Your organisation was not associated with Coffs Harbour at all, was it? A. No, it was not. 10

(Authority to Prospect number 156 and Authority to Prospect number 157 tendered without objection and marked Exhibits 21 and 22 respectively.)

MR. MILNE: They are three of the documents that are in. The fourth one is missing, the Carpenter one, which is Authority to Prospect number 186 for ML.51.

Q. Now the history is this, is it not - and I think that this coincides with what you just assented to to his Honour - on 15th March 1958 special lease applications 1108 and 1109 were lodged in respect of ML.42 and ML.48? A. Yes. 20

Q. They were to be in favour of two trustees for Wyong Alluvials? A. Yes.

Q. And on 3rd August 1958 Carpenter lodged his application 1150 in favour of two nominees over ML.51? A. Yes. The nominees are different in the two cases. 30

Q. I know they are different nominees, but the nominees were both for Wyong Alluvials? A. Yes.

Q. So that the applications in respect of these were lodged on 15th April 1958 and on 3rd August 1958. Then special lease 175 over the area ML.42 issued on 3rd May 1961 was ultimately transferred to Wyong Alluvials on 14th January 1963? A. Yes.

Q. SL. 176 over 48 was issued on 14th June 1961 and was transferred to Wyong Alluvials on 14th June 1963? A. Yes. 40

HIS HONOUR: I had January previously.

MR. MILNE: If one looks at the lease one will see which is the correct one.

HIS HONOUR: In the affidavit you said January.

MR. MILNE: So it is --- A. January.

Q. And the last one, SL. 202 over ML.51 issued on 29th August 1962, transferred on 24th April 1964. That gives the history of the total of these three?

A. Yes.

Q. And you say as has become necessary the applications for renewal have been made and none of them have been refused? A. That is right.

10

Q. What is the significance of them not being refused? (Objected to.)

HIS HONOUR: Not being granted or refused?

MR. MILNE: Granted or refused. (Objected to.)

HIS HONOUR: Q. To your knowledge has anything that the company has done or failed to do been responsible for the position that some of the applications have not yet been granted or refused or ---

A. No, nothing whatsoever.

MR. MILNE: Q. When was it that the dredge moved onto the southern areas? A. June 1969 - the 10/10 dredge.

20

Q. And it has been operating there ever since?

A. Yes, it has. It moved out of the subject leases for something like four months to leases immediately south but still on the peninsula and then it returned into them again.

Q. Those two leases that it moved onto are not the subject of this suit? A. They are not, no.

HIS HONOUR: Q. When was that? A. That would have been probably some time like December 1969 when they moved off and back in April or thereabouts in 1970.

30

MR. MILNE: Q. In the affidavit that you made in the original proceedings I think you gave figures relating to matters of drill holes and tonnages, production tonnages? A. Yes.

(Affidavit of J.B. McKellar sworn 10th December 1971 tendered and marked Exhibit 23.)

Q. The head office of both of these companies is in Southport in Queensland, is it not? A. Yes.

40

Q. And there there are employed what I will call the administrative staff of the company?

A. Yes.

Q. And they consist, I suppose, of technical people like geologists and engineers and a legal officer, then clerical staff of various descriptions?

A. Yes.

Q. Can you give his Honour an idea of the number of employees that there are in that head office?

A. Between seventy and eighty in the head office.

Q. The company, of course, does not only operate in Munmorah and Tuggerah? A. No.

10

Q. It has got leases from the southern part of Queensland down to the central coast of New South Wales? A. Yes.

Q. About how many areas are there that are now operating? A. There are six operating districts, the North Stradbroke in Queensland, Byron Bay, Jerusalem Creek, Laurieton, Swan Bay and Wyong in New South Wales, and there are processing plants at North Stradbroke, Southport and Hexham, the first two in Queensland and Hexham in New South Wales. Some of these districts have a single plant operating, some of them have two or three plants operating.

20

Q. What I want to get from you, those people in headquarters, their activities and their salaries, I take it, are spread over functions that they perform in respect of each one of those including Tuggerah? A. They are, yes.

Q. Let us come to the Tuggerah and Munmorah area, the amalgamated area. Approximately how many men and what sort of jobs they do are included in that project?

30

HIS HONOUR: You do not mean the headquarters for Munmorah or Tuggerah - in that area?

MR. MILNE: Yes, in that area.

WITNESS: In that area, which we call the Wyong District, prior to December there were somewhere between 130 and 140 employees. Then, of course, there were 70 or 80 employees at Hexham ---

Q. Let us deal with the 120 to 130 in the Wyong area. Some of those were in Munmorah; some of them were in Tuggerah? A. Yes.

40

Q. Can you break it up for us? A. Each operating plant in that area has something like 20 people, plant operators on the plants.

Q. So that if there is a plant in Munmorah you



would have 20 men on the plant? A. Yes. Associated with the three plants and spreading their activities over the three fairly evenly, since they are all much of a size, are something like 50 engineering personnel, fitters, welders, tradesmen generally associated with this and service personnel for all three plants. Then on top of that is a clerical administrative staff of something like 20 people, I suppose.

10

Q. Where are they housed? A. They are at Munmorah. They are in that district.

Q. You have got clerical people there, have you?  
A. Yes.

Q. And that is what goes to make up the 120 to 130? A. Yes.

Q. And that was to operate three plants? A. Yes.

Q. That is one at Munmorah and two that were down at Tuggerah as at December? A. Yes.

Q. How many people are left there now? A. Something just under 100.

20

Q. So there are about 20-odd left since December?  
A. Yes.

HIS HONOUR: Q. I am just trying to refresh my recollection. Was the plant in ML.44 operating in the sense of recovering material fully or was it simply being installed there? A. No, it was not, but it was a plant that had been operating in Munmorah with a complete crew and everything else and we moved it down onto Tuggerah, and in the course of the several months of moving we occupy the plant operator personnel in various jobs and then when it starts to produce again they go back as plant operators.

30

Q. The move commenced, did it not - correct me if I am wrong - in July 1971? A. Yes, the operation of moving started then.

MR. MILNE: Q. And it took until some time in December? A. Yes - well, in fact early in December it was in a position to go.

40

Q. You might just tell his Honour how it is moved. Is it moved by low loaders or ---? A. Yes. It is dismantled virtually down to sizes of a maximum of about ten tons, it is dismantled using cranes, the whole structure, and all the equipment in it is numbered and lettered and an orderly

sequence of loads moves from Munmorah to Tuggerah and then it is reconstituted down there. You move all the cranes and everything down there and reconstitute it. This particular plant 20 was not a normal operation in that it suffered some structural damage in July which complicated the issue quite a lot in that there was quite a lot of new steel structural work contracted and done coinciding with the move and a plant move of that size, which would normally occupy about two months, in fact occupied five or six months because of this new steel work and so on.

10

Q. How far did you have to move it from Munmorah to 44? A. It is something like a six mile move.

Q. And you kept on people who were to operate plant 20 doing other jobs during those six months?

A. Yes.

Q. So that they were the people who were connected - you have told us the number of people who were connected with those two plants, and then there is a proportion, I suppose, of the people at Hexham who would be said to be a necessary part of the Tuggerah operation? A. Yes. Hexham receives concentrates to process from Laurieton, Swan Bay and Wyong. Normally it operates on a three shift basis non-stop round the year processing. The stopping of plant 20 meant that we reduced it to a five day week operation of three shifts, but it meant there were between twelve and fifteen less jobs at Hexham as a result of this curtailment of mineral production.

20

30

Q. So that would mean plant operators from plant 20 were put off and something like fifteen people from Hexham were put off? A. The equivalent of. The union always works on the "last on first off" basis, so that in fact some of the plant operators on other plants at Munmorah were put off and the whole thing was re-arranged.

HIS HONOUR: Q. But wherever they were in fact at the time, about twenty persons in the Wyong area and twelve to fifteen, was it, in Hexham were discharged? A. Yes.

40

MR. MILNE: Q. That is because of plant 20. Plant 10 is still operating? A. Yes, it is.

Q. Does one need the same equivalent number of men who operate plant 10 as one would need for plant 20, both at Tuggerah and Hexham? A. Yes. A further complication here, of course, is that in December when the plant 20 programme was interrupted we put off the directly employed people, if you

50

like. We tried to keep the full engineering strength of the district the same. We did not dismiss any tradesmen, we did not dismiss any of the 20 clerical staff, because we hope, of course, that we can revert to the operation that we had before. Now, when you talk about plant 10 stopping operations, then we would put off equivalent numbers of both twenty and ten to fifteen at Hexham, but we would then also, of course, no doubt put off two thirds of the tradesmen, which would be another thirty, and probably two thirds of the clerical force, which would reduce that to six or eight in respect of the twenty that are there at the moment. 10

Q. I want to ask you now about your meetings and verbal discussions with Councillors and/or Council officers over the period of years in relation to the mining operations of these Tuggerah leases. I do not want to worry about letters at the moment. I just want to talk about meetings that you had. 20

A. My first recollection in the Tuggerah area was this meeting with the Minister for Mines and Minister for Lands ---

HIS HONOUR: Q. That was at Munmorah wasn't it?

A. No, it was at Tuggerah on the site, with the various conservation groups and also present were one or two Councillors.

MR. MILNE: Q. Do you remember when that was?

A. That was in November 1967.

Q. Where did that meeting actually take place? 30

A. It took place on the Tuggerah peninsula. The two ministers were shown over the area, partly in Landrovers, partly on foot, so that they saw parts - on the western side of the road. I think they restricted their visit to the western side of the road to see parts of the red gum and parts of the rain forest in that area.

Q. Do you know who these Councillors were at this meeting? A. I think Councillor O'Connell was there but I am not absolutely certain. 40

Q. What about Councillor Barrett? Was he there?  
A. I do not recall whether he was.

Q. Were there any officers of the Council there?  
A. I do not know. It was a very big group of people. There were at least six conservation groups concerned and each Minister was accompanied by various people from his department and there was some company personnel there.

Q. About how many people were at this meeting?

A. The whole group would be, I would think, upward of fifty people.

Q. This was late in 1967? A. Yes, November, 1967.

HIS HONOUR: Q. I show you a plan which is taken from Exhibit 17. I am not concerned with any coloured markings on the plan, but you will see there descriptions of areas which suggest that there are angophora trees and other types of trees or scrub or other growth there. Would you have a look at that?

10

A. Yes.

Q. Does that coincide with your recollection in general of the area? A. Yes, it does.

MR. MILNE: Q. Do you know who the author of that map was?

HIS HONOUR: Q. By way of explanation, the map seems to assume that somebody has made some type of survey of the type of vegetation and growth that is there. Do you know who prepared that? A. The map arose as a direct result of this meeting that I am talking about where the two Ministers concerned asked that the conservation groups prepare some form of record of the vegetation they were interested in, and the mining company examined its grade maps and so on and decided what, if any, it was prepared to release. In fact the Mines Department offered to produce a base map which both parties could use, and the Lands Board office at Maitland, I think, actually produced a plan very like that to which was added the vegetation and which we received from the Mines Department showing the area that the conservationists were interested in and on which we were to put what we were prepared to relinquish.

20

30

MR. MILNE: Q. I think that you yourself later on at some point of time employed people associated with conservation work to advise the company on it? A. Certainly.

Q. Don't tell us about it at the moment. I do not want to get out of sequence. You had some advice though, did you? A. Yes.

40

Q. I want to come back to the meeting. Who was it who spoke at the meeting and what was said? What was the discussion about? A. The deputation asked the Ministers ---

HIS HONOUR: Q. That is the deputation of conservationists? A. Yes, led by Harry Jensen, the local M.L.A., invited the Ministers to view this area and

asked them to take steps to preserve what they regarded as a very nice and worthy area of conservation.

MR. MILNE: Q. To preserve it from what? A. Preserve it from mining.

Q. Was there any suggestion made by anybody at that meeting, from a Councillor or indeed from anybody who was at the meeting, that the company had no right to be mining? A. No, there was no suggestion. 10

Q. Was there any discussion in a positive form about the rights to mine? A. I think that everybody at that meeting, and I think the presence of the Minister for Mines at the meeting showed that everybody concerned at that time at that meeting assumed that these were our leases and assumed that we had the right to mine them.

Q. So there was nothing positive said about them? A. No.

Q. When you went to that meeting had you been made aware of a letter dated 5th April 1967 from the Wyong Shire Council to Mr. Griffith, which is part of Exhibit 17 and which I now show you. (Approached witness.) A. Yes. 20

Q. You were aware of that letter? A. I was aware of that, yes.

Q. You were telling us about a meeting which I think you said was in December 1967? A. I said November.

Q. In April 1967, you will recollect that the Council had written to Mr. Griffith informing him that they had passed a resolution requesting that the company be asked to formulate its plans for mining the area and then arrange a further conference with the Council to acquaint it with the proposals in detail, and that the Council also confer with Associated Minerals? A. Yes. 30

Q. Do you know whether between April 1967 and November 1967 any plans for mining the area had been formulated and sent to the Council? A. I understand that Mr. Griffiths in fact went to the Council in this period and addressed the Council. 40

Q. Do you recollect whether there was any consultation between Associated Minerals and the Council in that period? A. I do not recall any particular ones in that particular ---

Q. You have told us about this meeting in November, 1967. What was the next occasion on which you had direct communications - not by way of letter, but direct communications by speech with Councillors or officers of the Council or the full Council itself?

A. I went to the Council at their request to outline - their specific request was to answer any questions which may arise on our mining programme in the Wyong Shire.

10

Q. When you say you went to the Council, do you mean a meeting of the Council? A. Yes.

HIS HONOUR: Q. Is that in a letter, that request you are talking about? A. I could not say. A lot of the dealings with the Council were that the Shire Clerk would ring up our local district officer and ask him, but there were occasions when they did write.

Q. Do you know when this was? A. I find it very hard to place it.

20

Q. I see that on 18th December 1968 there is a letter from the Council to the first defendant, from the Shire Clerk saying:

"I have been directed by the abovenamed Council to request that your company forward at its earliest convenience a plan of The Entrance North Peninsula showing the areas which it proposes to mine. This plan is required for comparison with a plan of the same area showing those portions desired to be preserved by conservationists."

30

On 2nd January 1969 the plan was sent. Is that the one you are talking about? A. No. That all occurred somewhat later than the time I am trying to think about.

Q. Was this between November 1967 and December 1968? A. Yes.

MR. MILNE: Q. You went to - you say it was a meeting of the Council? A. Yes. I believe it was in connection with our operations on the leases south of this.

40

HIS HONOUR: Q. That is south of the four we are concerned with, is it? A. Yes.

MR. MILNE: Q. Can you fix whether it was day or night? A. Day time.

Q. It was in the day time? A. Yes.

Q. And you went along to the Council Chamber, did you? A. Yes.

Q. Was anybody with you? A. Yes; Mr. Wells was with me.

Q. That is Mr. Andy Wells, the man who made an affidavit in this case? A. Yes. He was at that time the district manager at Wyong.

Q. When you went along to the Council meeting did somebody invite you to say something? A. Yes. 10

Q. Do you know who it was? Was there any resolution ---? A. The Chairman - that was Councillor Barrett - said that I had come along to answer any questions which Councillors may care to put to me, and as I recall Councillor O'Connell put a few questions ---

Q. I would like to know what was said and what you said as best you can recollect. A. Most of the doubts were on the subject of how well we could rehabilitate the area. 20

Q. Did anybody question whether you were going to mine the area --- A. No, they did not. We stated our intention to mine; I mean, that is the very reason we were there.

Q. Did you tell them at that meeting you were going to mine it? A. I doubt it. I mean, why else would they have invited me to be there?

HIS HONOUR: Q. You do not recollect having said anything about that? A. No.

MR. MILNE: Q. You do not recollect having told them that you were going to mine the area? A. No, but obviously the question they asked on restoration and rehabilitation of the area implied that we were going to mine it, and I certainly answered on the grounds that we were going to mine it. We were not about to rehabilitate leases which were not mined. 30

(Luncheon adjournment.)

ON RESUMPTION:

MR. MILNE: Q. We were dealing with the meeting that you attended at the Council somewhere after 1967 and before the end of 1968? A. Yes. 40

Q. As a result of that meeting do you recollect whether the Council passed any resolution or did anything, while you were present? A. Nothing while

we were present. I was just thanked for coming along and answering questions and I went. The Council meeting was obviously going on thereafter.

Q. But you do not know what happened? A. No.

Q. When was the next time that you had anything verbally to say to either the Council or a Councillor or Councillors or officers of the Council? A. Verbal communications as far as I was concerned personally, I cannot recall any at all until fairly close to the present time.

10

Q. What about in 1969? Do you remember the letter of 2nd January 1969 when you sent the plan?  
A. Yes.

Q. Had you been present at any meetings held on the site with the Council and/or conservation people immediately prior to that or some months prior to that? A. No. Wells and Surman attended that.

Q. Mr. Surman who was the prospecting and mine planning manager of your company? A. Yes.

20

Q. When was the next occasion when you had any contact verbally? A. As I say, I do not recall any until the meeting which the Minister for Mines agreed to chair which was held in Parliament House following a deputation introduced by Mr. Jensen at which representatives of the Council, the company and the conservation interests discussed the matter at the peninsula.

HIS HONOUR: Q. When was that? A. That would have been late in 1971, October, November.

30

CROSS-EXAMINATION:

MR. WILCOX: Q. Can I just clarify one matter where I think yesterday you gave a couple of different dates. In respect of the drilling that took place on ML.44, which is shown in light brown --- (Exhibit 5 shown) would you look at the position of the light brown markings on ML.44? On the legend that is shown as July 1968 to June 1969? A. Yes.

Q. I think at one stage of your evidence yesterday, and perhaps by inadvertence, you talked about 1966, 1968. The date actually shown on the legend is correct, is it not? A. Yes, the date on the legend is correct.

40

Q. And I think, indeed, that work was commenced shortly after and as a result the meeting with various conservationist groups and the Ministers



to which you have referred in your evidence today?

A. Yes. I think that is ---

HIS HONOUR: You mean the one that was in November 1967?

MR. WILCOX: Yes.

Q. If I can just recapitulate, there was this meeting with about 50 people present, including the two Ministers, in about November 1967? A. Yes.

Q. Subsequent to that, do you recall that on 10th July 1968 there was a further meeting on the site between various representatives of the conservationist groups and also company personnel, and as a result of that meeting the company immediately proceeded to embark on the drilling programme which is marked in light brown? A. I recall the meeting in July 1968. I was not at it, as I said to Mr. Milne. I also recall that we had given an undertaking in trying to arrive at what areas we could have excised from these leases for conservation to carry out certain extra drilling operations.

10

20

Q. Two questions: First of all, the drilling to which you refer took place shortly after the meeting of 10th July 1968 - that is the light brown lines?

A. Yes - well, it took place - July 1968, that is right.

Q. I wonder if I could just read from a paragraph in a letter which was sent to the various conservation groups with, I think, copy to the Council on 4th October 1968 under the hand of Mr. Surman of your company. Would you listen to this paragraph and tell me whether it accurately sets out what was done in relation to the light brown markings?

30

HIS HONOUR: Would it be more appropriate before it gets into evidence if you showed it to him?

MR. WILCOX: Q. (Document shown.) The relative paragraph is the top paragraph on page 2 of that letter. Please look at the letter, if you wish, to see the context in which it is written. A. I recall the letter. The only thing, of course, is that it does not refer to ML.44.

40

HIS HONOUR: Q. You mean the letter does not refer to or what was done ---? A. The area referred to specifically was the area which the conservation interests said they were interested in, which was 48, 51 and a small part of 44 west of the road which is shown by a green line ---

Q. On the plan which is already in evidence?  
A. Yes.

MR. WILCOX: Q. The paragraph to which I have referred says this, does it not? I will read the previous paragraph also. "A further meeting was held with yourselves and this company's representative, including the company's agronomist, on 10th July 1968 and subsequent to that meeting you forwarded to us a plan showing the areas you considered would be desirable for conservation, for which we thank you. The company immediately embarked on a full scale drilling programme to more accurately delineate the ore body and to determine the exact mining path which would be necessary to mine the area. Results available from this drilling were used to enable a feasibility study project to be made by our geologists and mining engineers." Now, that is what was said in the letter of 4th October, 1968, is that right? A. Yes.

10

20

Q. Do you understand that letter to be referring to the drilling which was done on ML.44 and which is shown in light brown on Exhibit 5? A. No. I understand it to refer to - on the same map I have here ML.'s 51, 48, 42, July 1964 to February 1970, yellow with a broken black line.

Q. I see. That is the further groups of drillings which were done on those three leases and which were the subject of some 1969 bore log reports? A. Yes, and no doubt the geologists would have used those parts of ML.44 drilling to determine what best we could give away.

30

Q. Can we just get what happened, first of all. At this time - this is from July 1968 - and through to the time that the letter was written in October there had been some drilling activity which was the light brown on ML.44 and also there was some supplementary drilling on 51, 48 and 42 which are the bore hole reports already tendered in evidence, is that correct? A. Yes.

40

Q. This letter goes on to refer to the grade of the mineral, and is it a correct statement that the lease applications contain a large ore body of a very low grade mineral content? A. That is a correct statement, yes. Naturally it can be qualified on what is very low grade.

Q. There has been some reference to the time which elapsed between the application for the lease on 44 and the issue of the lease. I think you have told the Court the company did not take any steps

50

to either expedite or hinder the issue of a lease, is that right? A. That is right.

Q. It would, of course, have been possible for the company to have sought and, in your experience, obtained expedition had it wished? A. Yes. They certainly could have sought. Whether they could obtain ---

Q. You realize, of course, in respect of the Wyong Alluvial applications the time which elapsed was very much quicker than in your company, albeit with the help of persons who wrote to the Minister and sought some expedition? A. Yes. 10

Q. But your position or your company's position was, I suppose, as long as the lease application was pending it did not much matter if it took a long time to issue providing that it did issue before you eventually wanted to mine it? A. Ideally we would like all our leases issued immediately we put in the application. We do from time to time approach the Department to speed one or another up, and in so doing we realize that we are probably slowing down the rest of them. 20

HIS HONOUR: Tell me if you object to this.

Q. What is the practical position about renewal? Is it fairly automatic or does it sometimes cause troubles? If it were not to be renewed and you only wanted the area as reserve the longer the delay the better? A. Yes. We have had in the past very little trouble with renewals. 30

Q. But there could be a possibility of doubt?  
A. Yes. There is a hearing at that time at which people can object.

MR. WILCOX: Q. And I suppose the issue of the lease in advance of the time you actually desire to mine, it means that you then have to trouble yourself with suspension of labour conditions? A. We have an organization to cover this and it does not matter whether there are a few more or a few less.

Q. But it does mean somebody has to put in the application, attend the Warden's Court and do the administrative work? A. Certainly. 40

Q. And the position is, in relation to each of the four lease areas with which we are here concerned, your company and also Wyong Alluvials have made applications as necessary from time to time for suspension of labour conditions? A. Yes.

Q. And such applications have been made to cover all those periods other than periods when it has been anticipated that there would be actual dredging work being conducted on the relevant lease? A. I believe so, yes.

Q. And in each case the reason which has been given in support of the application was the statement that at present commodity prices the working of the area was uneconomic, or something to that effect? A. I do not know if in each case that was. I remember that the reason for applying for lease suspensions was a matter of deep suspicion by everybody who used the same one over and over again and searched for some different wording. I think you will find the later ones are probably differently worded, but I would not be sure if that applied --- 10

Q. However the artistic expression of it, the reason given to the Mining Warden was basically that at present prices it would not be economic? A. Right. 20

Q. And I suppose when the applications for suspension were put before the Mining Warden's Court they were verified by someone on behalf of the Company? A. Yes.

Q. And so far as you were concerned the statements were true, were they? A. Yes.

HIS HONOUR: Q. May I inquire - it probably is not irrelevant to this aspect of the matter - at what time, for example, ML.44 was amalgamated with other leases? A. ML.44 was very late. I believe that amalgamation was in 1969. 30

MR. WILCOX: Q. In your affidavit which has been tendered, the affidavit of 8th December, you set out in paragraph 15 the estimated quantities of rutile and zircon in the five years - that is including also ML.39? A. Yes.

Q. Those estimates that are set out in paragraph 15, are those the estimates which were formed prior to the actual dredging of materials on these areas? A. The estimates given would have come from the company's reserve records which are renewed and revised at approximately twelve month intervals. Say in February/March of each year the control geologist goes through every lease we have and subtracts the material we have worked or the area we have worked, adds in areas we might have found and uses any drilling that was carried on during the year to define and so on the reserves for a particular area, so I imagine the ones in the affidavit were ones that were updated and available in February/March 1971. 40 50

Q. If one were seeking to estimate the amount of rutile and zircon on these five leases as at this moment, one, of course, would have to know and deduct the material which has been taken by the southern most dredge in the last twelve months? A. Yes.

Q. And as at February or March 1971 the figure for rutile was 342,000 tons and I think that compares with the total estimated reserves of the company of rutile of just on 2,000,000 tons as at the same date?

10

A. That is right.

Q. That is as at February/March 1971?

A. February/March, 1971.

Q. And so far as zircon is concerned, the figure that is given is 193,000, and again that compares with a figure of, I think, about 1.8 million tons of zircon as at the same date? A. Yes.

Q. And the total reserves of the company, are those about ten per cent. of zircon reserves as at that time? A. Somewhere between ten and fifteen, yes.

20

Q. There has not been any detailed description of the method of mining which the company would use on the subject land, but you may recall that Mr. Wells gave some description in his affidavit in the interlocutory proceedings. Check whether this is a correct description. I think, firstly, the area which is proposed to be ---

HIS HONOUR: Would it be convenient either to tender with consent the whole or some part of that affidavit?

30

MR. MILNE: Mr. Wells is going to be called.

MR. WILCOX: If Mr. Wells is being called I will leave it until then.

Q. Is it the policy of your company after mining an area to attempt the restoration of the land form so far as possible back to the contours of the land as it was before mining? A. As a general statement, yes. There are three reasons why this may not be so. One, on the frontal parts of this ore body, for example, the natural state is a highly unstable one, therefore we would be given lease conditions and we would be investigated by the Mine Inspectors to make sure that we placed a stable form in place of the existing unstable forms. The second case, I think, is the case where the Crown or private land holder anywhere may have a specific use in mind for the land subject to mining and they stipulate they want it all level - no trees, certain sort of grass.

40

Q. That is a specific request for it to be left in a certain way? A. Yes. The third case, of course, is once again the area in question, approached by the local Council for sports grounds and formation and this sort of thing, where we would do the earth work for the company's sports grounds in the programme.

Q. It comes to this, does it, that unless requested by the landowner, the Crown or an appropriate local authority and except in the case of unstable frontal parts, the company would seek to restore the contours as far as it could to the natural position? 10  
A. Yes.

Q. You gave some evidence yesterday regarding the prospecting which had taken place on ML.44 before you joined the company in 1957? A. Yes.

Q. You may recall you gave a lot of evidence when you said something would have been done. Is it correct you described what you assumed would have been done from current practice at that time rather than anything of which you had personal knowledge? A. Naturally I went through the records fairly closely, and I agree that it would have to be that since I was not with the company I must have assumed it. 20

HIS HONOUR: Did you refer to the year 1957?

MR. WILCOX: Yes.

WITNESS: 1956.

HIS HONOUR: I do not think there is any evidence of anything happening in 1957. 30

MR. WILCOX: I thought I said prior to 1957.

Q. You joined the company, did you not, in 1957?  
A. Yes.

Q. Can you tell us which month? A. March.

Q. Mr. Aubrey Brown is now a director of Associated Minerals, is he not? A. Yes.

Q. Has he been a director now for some years?  
A. Yes, he has been a director of Associated Minerals since 1967 when the two companies merged. 40

Q. You know Mr. Aubrey Brown as a solicitor carrying on practice in Wyong? A. Yes.

Q. I think Mr. Ronald Nash, who was one of the

nominees in the early days for one or more of the leases, is also a solicitor within the Wyong Shire?

A. I do not know. I do not know Nash.

Q. You told us yesterday that you first became aware of the town planning restriction within the Wyong Shire shortly after the prescription of the scheme? A. Yes.

Q. The prescription took place in May 1968. Can you tell us how long after that date you became aware that there was a planning scheme ordinance which sought to control sand mining? A. I am trying to - when I became aware of it would have been - I really do not know. I do not know how soon with any certainty.

10

Q. You will recall that in May 1969 the company made application to the Council for permission to mine the two small areas south of ML.39, which were special lease application 1614 and special lease application 1625? A. Yes.

20

Q. And the company made application to the Council in May in the knowledge that there was a planning scheme ordinance? A. Yes.

Q. And taking the view, rightly or wrongly, that the Council's consent was necessary? A. Yes.

Q. And you are aware, are you not, that that consent was primarily given after some debate between the Council and the State Planning Authority later on in 1969? A. Yes, I know we got the consent. I do not know what the machinery of it was.

30

Q. And, of course, nothing was said about it in any of the discussions with the Council or Council officers to which you have referred this morning to indicate that the company took the view that it was entitled to mine without seeking consent on the subject areas? A. I think that I and the Council took the view that because we had a mining plant ---

HIS HONOUR: The question simply at the moment is did you say anything or was anything said ---

WITNESS: No.

40

MR. WILCOX: Q. Do you remember that at one stage - I think in 1969 - your company sent a fairly detailed letter to the Council setting out what dredges they had and the position in which they were then working? A. Yes.

Q. And at that time dredge 20 was working on the Munmorah area, was it not? A. Yes.

HIS HONOUR: Did you say May? I think it was 5th December 1969.

MR. WILCOX: Q. (Approached witness.) This was apparently sent by Mr. Surman? A. Yes.

Q. You would have had knowledge of the information he was giving? A. Yes.

Q. You see that he indicates that number 18 plant was currently operating at Munmorah and was expected to continue operations until 1974/1975?

10

A. Yes.

Q. Is that plant still operating at Munmorah?

A. It is.

Q. The letter goes on to say, "Number 20 plant on the northern end is expected to continue in that area until 1980"? A. Yes.

Q. Does that mean that there is still a considerable quantity of material available in the Munmorah leases? A. Yes, there is.

Q. It was stated in that letter apropos the Tuggerah leases that number 10 plant, which was then operating at S.L.A. 1614 and 1615 would return to ML.42 and proceed northerly? A. Yes.

20

Q. "And in December 1971 we plan to introduce an additional large plant"? A. Yes.

Q. That is in the position where plant number 20 is at the present time? A. Yes.

Q. Was there any particular reason why number 20 plant was moved from Munmorah down to Tuggerah leases rather than following the plan which was set out in that letter? A. Yes, there was a very particular reason. The large plant referred to in that letter which was to go to ML.44 was a unit operating at Swan Bay. Now, also according to that letter the number 20 unit was to continue in Munmorah. As I mentioned earlier we had an unfortunate accident with plant 20 at Munmorah and we required considerable structural work to be done upon it. We therefore made the decision to leave the Swan Bay plant where it was and move this plan 20 down to take the place of the Swan Bay one in ML.44 at the same time.

30

40

Q. This meant that at one stage you had in mind having a total of four plants in the Wyong district?

A. Yes, for the short period till, I think the letter says 1974/75.



Q. And then you decided to keep the Swan Bay plant where it was and have a total of three dredges in the Wyong district? A. Yes.

HIS HONOUR: Q. Swan Bay is in the Munmorah or Wyong district, is it? A. No; it is in the Port Stephens area which is just north of Newcastle.

MR. WILCOX: Q. Why was it that you did not leave plant number 20 at Munmorah and have two on the Munmorah leases and one on the Tuggerah lease? 10

A. Because the Munmorah leases are a higher grade than the Tuggerah leases and therefore if possible you like to work the Tuggerah and Munmorah leases in conjunction, thereby spreading the use of your reserves over the whole life of the two deposits. Now, the accident to plant 20 which gave us the opportunity of moving 20 down there, it was necessary to maintain this balance between the two, for the very reason as stated in that letter, that plant 18 was to cease operations in 1974/75 to conserve the Munmorah material so that it could be worked in conjunction with the Tuggerah lease. In fact with the present circumstances with 20 and 10 working at Tuggerah we are currently refurbishing plant 18 so that it will not shut down in 1974/75 at all, as far as we know, but we will proceed to work the Munmorah leases in conjunction with those two plants on the Tuggerah leases. 20

Q. Does that mean number 18 is not working at the present time? A. It is working, but there is a considerable amount of design work and so on. 30

Q. Was the decision to move plant 20 related at all to any fears that unless the section west of Wilfred Barrett Drive was mined quickly resistance might build up so that it could not be mined at all? A. No.

Q. Of course, the company has known for some four or five years that there is considerable opposition to the mining of the area west of Wilfred Barrett Drive, and you personally have known that. (Objected to; allowed.) 40

Q. You personally have been aware for some four or five years of some considerable opposition from persons within the Wyong district to mining the area held under lease by your company west of Wilfred Barrett Drive? A. I have been aware of considerable opposition for the latter six months of 1971.

Q. You were aware, were you not, as long ago as November 1967 that there were at least six local groups opposed to the mining of the area west of 50

Wilfred Barrett Drive? A. No, I was not. The six local groups to whom you refer were opposed to mining a part of the rain forest and a part of the red gum forest.

Q. They were certainly opposed to unrestricted mining west of Wilfred Barrett Drive? A. Yes.

Q. And indeed, your company in March 1970 applied to the Minister for Mines for a renewal of the leases of these areas for twenty years rather than the customary five years, did it not? A. Yes.

10

Q. And did it not give as its most important reason the building up of opposition to mining and did it not expressly apprehend that unless it had security over 20 years it might be prevented from mining? A. Yes.

HIS HONOUR: When was this done?

MR. WILCOX: Q. March 1970, is that right? A. Yes. The Minister for Mines was pressing, as you realize, at that time for us to relinquish this area that we had agreed to relinquish. We, for our part, were saying we were quite prepared to relinquish this area to have it preserved. However, we do not believe that this will meet all the demands of all the various groups, therefore we would like him to give us a longer term lease in exchange, if you like, for the relinquishment of this area of 200 acres.

20

Q. And specifically a 20 year lease? A. Yes.

Q. And the Minister replied, after some months, stating that he was not prepared to depart from his usual policy that sand mining leases should not be - A. I think so, yes.

30

Q. The position is quite clear, is it not, that when your company took the decision to move plant 20 onto ML.44 it was aware of the existence of the planning scheme ordinance? A. Yes.

Q. And it was aware of the fact that the dredge would be operating either within or very close to the area about which there had been protests from the conservation groups? A. We believed it could operate for six months outside that area.

40

Q. And then it was intended to go into the area? A. Then it was intended to go into the area.

Q. And the company took the decision to move the plant to that point without submitting any development application to the Council? A. I do not think it even considered it.

Q. Despite the fact that you personally were aware of the existence of a planning scheme ordinance during 1971? A. We were firmly of the belief that it did not apply to these leases.

Q. And the company did not take any steps to have the correctness of that view determined prior to committing itself by moving plant 20 to the area? A. Well, naturally, as anybody knows, it sought legal opinion on these things from its own solicitors. 10

Q. But it did not take steps to have any declaration rights on the matter made by any Court?

A. Not as far as I know.

Q. Of course, if dredge 20 had been still operating at Munmorah there would not have been any necessity for the retrenchment of men which took place after the last Court hearing in December? A. No.

MR. WILCOX: Q. You told my learned friend yesterday that no complaint had been made to your company by the Council in respect of dredge 20 prior to the institution of the suit. Do you remember giving that evidence? A. I don't remember prior to the institution of the suit, but I remember giving that evidence. 20

Q. You were of course aware from at least July 1971 onwards that the Council was very much opposed to the proposed operation of dredge 20? A. The Council, like most other people, was opposed to the mining of the area west of the road, or some part of it. 30

Q. The Council had passed a resolution in July by which it purported to put a tree preservation order over a large section of the area? A. Yes.

Q. And you knew at that time that the Council did not wish that area to be mined? A. What the Council wished what I interpreted the Council wished, was wording you used before - they did not wish unrestricted mining west of the road.

HIS HONOUR: Q. But you did know, did you not, that whether it was valid or invalid, or whether it had any legal operation or not, the tree preservation order was intended for the time being to stop your company from bulldozing down any trees? A. Yes. 40

MR. WILCOX: Q. And you knew that very shortly after 22nd July 1971 when that resolution was passed by the Council? A. Yes.

Q. Of course your company has a resident district manager in Wyong? A. Yes.

Q. One of whose jobs is to know what is going on in the area insofar as it affects the company's interests? A. Yes.

Q. And to report to you anything of any materiality? A. Yes.

Q. And he did that and you were aware of the position? A. Yes.

10

Q. Then you did attend a meeting called by the Minister for Mines in October 1971? A. Yes.

Q. At which there were representatives of the Council in attendance? A. Representatives of the then Council, yes.

Q. It included, did it not, the Shire President?  
A. The man who labelled himself Shire President was not the Shire President. There were two of them there.

Q. There was Councillor Hines, was there not?  
A. Yes I believe so.

20

Q. Who, whether lawfully declared elected or not to the Council, bore the title of Shire President?  
A. Yes.

Q. There was also Councillor Chalmers, who is Shire President now? A. Yes.

Q. Both of those Councillors made it very clear to you in the presence of the Minister that they were opposed to mining being commenced by dredge 20 except with a prior development consent? A. They did.

30

HIS HONOUR: What was the date of that?

MR. WILCOX: I think it was 16th November, 1971 would that be right? A. I think that is right. We were most anxious to have that meeting and the Council deferred it several times because of their unavailability, but I think the 16th was the date of it.

Q. Shortly after that date, namely on 18th November, did not the Council write to your company enclosing the appropriate form for a development application, and inviting the company to submit a development application? A. They did.

40

Q. And I think that the reply to that letter

came through your solicitors, Messrs. Robson, Cowlshaw & McCredie dated 29th November, when the solicitors stated that the company did not propose to seek consent but would commence mining on 8th December? A. Yes.

MR. MILNE: If that is all the letter says, I do not mind it being read like that.

HIS HONOUR: Is it in evidence?

MR. WILCOX: No. I will extract from the Council's file both of those letters, and I will tender them. 10

(Letters dated 18th and 29th November 1971 tendered and marked Exhibit "F".)

Q. You have been over the areas within these mining leases on a great number of occasions, have you not? A. Yes.

Q. And you are very familiar with them? A. Yes.

Q. You would agree, would you not, that at the present time the leases contain some particularly beautiful forest areas? A. Contain some particularly, yes. 20

Q. And you are aware that the lands are Crown lands? A. Yes.

Q. I suppose you would agree that, whatever view one might take about the desirability of mining or otherwise, there are certainly two sides to the question of whether or not the whole or any part ought to be mined? (Objected to; allowed.)

Q. You would agree that there are certainly two views which are open as to desirability of mining either the whole or any part of this peninsula? A. There are not two views. I believe that only if you mine the areas will you preserve any of it. 30

Q. That is your view? A. Yes.

Q. But would you agree that there is a different view which has been presented on a number of occasions to you by apparently sincere people? A. Yes.

HIS HONOUR: Q. I want to find out what you mean by that answer "Mining is the only way". Will you tell me what you mean? A. Yes. The area between the ocean and the lake has on parts of it some very fine forest of one kind and another. Now I have known the area pretty well since 1957 and up until the time when the Main Roads started to put Wilfred 40

Barrett Drive down the middle of it, which was about 1962-63, at that time it started to build it, it was - you could not get into it. There was not a flow of people through it. As soon as that main road went in, and ever since that time, we have had regularly two or three bush fires every year that people start by travelling through that road, and being able to move about on it. If we mine that area then these conditions will be such as I mentioned earlier, that we will return the contours to their present situation. The hills will be there, but we will leave quite big areas from place to place in the course of the mining operations. We will certainly leave the area of several hundred acres in the middle, which we have agreed, because that will be excised from the lease, but we will leave other areas as well. And I believe that if we do the necessary restoration after mining, and if the Council is prepared to pick up the business of being sort of wardens or foresters to the area, then it could be preserved. But I believe that if we do not mine it, and if the Council is not prepared to spend what are fairly astronomical sums of money on conserving it in its present form, then it will be obliterated in the space of ten or 20 years.

10

20

Q. I appreciate what you say about the 700 acres. I understand you to say that if the mining operation goes on, that will be preserved, while if it is just left as it is and nobody takes on the care and responsibility of looking after the whole area, whether by means of bushfires or other means, a lot of it will be wholly or partly destroyed? A. Yes.

30

Q. But what is to happen in relation to the question as to the balance of the land other than the 700 acres after you have restored it? A. There will be ---

Q. I know the contours will be there, but will there be rain forests? A. On the question of the Angophora, that will certainly be returned. That is the Sydney red gum which was quite successfully regenerated in the Munmorah area. The so-called rain forest, I would not expect it to regenerate very fast at all, and that is the very reason that in our excluded areas in the lease we have chosen the rather larger part of this than the red gums.

40

Q. It seems to me that you would take a large part of the red gum forest? A. Yes.

Q. But leave a substantial part of the rain forest? A. Yes, that is correct. The other thing I believe is that when we come to the detailed design of the dredge path it will become very necessary

50

to not mine certain areas in the vicinity of the lake. These are covered by cabbage tree palms, and one thing and another, and they are not in the leases at the moment, they are in a reserve along the edge, but we will obviously have a barrier between them and our mining operations, and the land is such that we would normally do this. But I really think that we can mine that area and hand it over to the Council in a condition which they can then maintain at a reasonable cost within their income, as a public recreation reserve and so on and I really think if we do not mine it, then nobody is going to do the work, and bush fires on the one hand and the erosion will destroy the whole thing, and eventually it will be taken over by housing development. 10

Q. The front being the oceanside or the lake side? A. The ocean side.

MR. WILCOX: Q. First of all, you have spoken of 700 acres proposed not to be mined. Are you referring to the red-hatched areas on the plan prepared by your company? A. I spoke of something more than 200 acres. 20

Q. I think the acreage which is red-hatched in that plan, and split up into six different segments, comes to a total of 415; is that right? You might like to look at the break-up in the report prepared for your company by International Engineering --- A. The six different ---

Q. First of all, you see there is a total of 415 acres proposed not to be mined? A. Yes. 30

Q. As against 1315 proposed to be mined? A. Yes.

HIS HONOUR: Q. What was it you were about to say? A. Obviously the six different areas you have referred to is this listing here, although equally obviously we left a blob in the middle. There is the 200 acres to which I referred, and there is east and west to that road.

Q. You say that is in addition to the six acres listed in the document in front of you? A. The east of the road 68 acres, main area west of the road 140 acres, as listed on page 1 of this book, are the areas to which I refer as 200 acres not to be mined, although there are 415 acres in all, some of these are within the leases, some of them are not. 40

MR. WILCOX: Q. Those 415 acres include the 80 acres which may only be mined with the Minister's special permission over near the village? A. Yes.

Q. Includes 56 acres along the lake shore which are not within the lease area? A. That is right.

Q. So that, of the total of 1570 acres which is available to the company for mining without the necessity of special permission, the company would propose to mine all except 270 acres? A. Yes.

Q. And that is the contribution that the company proposes towards the maintenance of the natural forest in the area? A. Yes. 10

Q. And that area of course is self-bisected by Wilfred Barrett Drive? A. The company knows ---

Q. That is so, isn't it? That area is self-bisected by Wilfred Barrett Drive? A. Yes.

Q. You said in reply to his Honour that you felt it was only after mining that this area could be adequately protected for public recreation purposes? A. Yes.

Q. One point that you make is the necessity for some proper control over the peninsula as a recreation area? A. Yes. 20

Q. Is there any particular reason why the peninsula cannot be properly protected and controlled as a natural area, for example, as a national park or a regional park, without the mining having preceded that control? A. There are no funds available.

Q. You are aware I suppose that this very area was nominated by the National Trust in its document called "Sydney 2000". Requirements on conservation of natural areas, scenic recreation, as being a suitable place for a State Park? A. I do not recall that. 30

Q. You were not aware of that? A. I was not aware that they had specifically said that, no.

Q. I suppose you would agree that the National Trust is one body who might be considered to have an informed opinion upon the suitability of an area for recreational purposes? (Objected to; rejected.)

Q. In any event, I think you agreed with me that many people had put a view different from yours, to you apparently sincerely? A. Yes. 40

Q. And obviously the decision which is to be made is a matter of some importance no matter which way it goes? A. Yes.



Q. You were aware, were you not, that in October last year Wyong Council was giving this matter very urgent and special attention? A. Because of the tree preservation orders?

Q. Whatever the reason, the Council had several special meetings which were devoted to consideration of the course it ought to take in relation to the north entrance peninsula and specifically the mining proposed by your company? A. No.

10

Q. You knew that, did you not? A. I don't recall knowing it in October 1971.

Q. You were aware that the Minister for Mines was seeking to have a conference arranged at which some discussion would take place so that a better-informed decision might be made? A. I was.

Q. You were aware of that on 29th October 1971, were you not? A. Yes.

Q. Do you recall that on that day you sent to the Council a very lengthy urgent telegram dealing with the application that your company had made for a permissive occupancy or supporting works in relation to ML.44? A. Yes.

20

Q. You sent copies of that telegram both to the Minister for Mines and to a Mr. Sinclair of the Wyong Employees Livelihood Committee? A. Yes.

Q. In that telegram did you inform the Council that unless the company was advised by 12 noon on Monday, 1st November - I will go back - "We would inform the Council that unless the permissive occupancy is granted immediately and the Council indicates that those works may proceed immediately we will be obliged to dismiss the work force which we had intended to employ on this work. Unless we are advised by 12 noon on Monday 1st November, 1971, dismissal notices will be issued to 15 members of our work force, giving seven days' notice on 5th November 1971"? A. Yes.

30

HIS HONOUR: Q. What is the permissive occupancy referred to there? A. We were building this plant, 20 plant, and we required a water supply from Tuggerah Lake so we could float the plant in a pond, carry out various tests on the plant when finished, and so on. The lease does not adjoin the lake, and as in the case of our other operation further down, we applied to the Land Board, Maitland, for permissive occupancy to put a pipeline across the reserve into our land from the lake, and the Land Board referred this to the Council. We asked the

40

Land Board why it was not forthcoming, and they said because they had not had a reply from the Council, hence we sent the telegram.

Q. Is that still the status of that situation?

A. No. The Land Board eventually granted the permissive occupancy and we constructed the pipeline in. This was a minor matter which offered employment for this 15 men for a week or two.

Q. When did you construct the pipeline? A. I think the first couple of weeks of December. That is about --- 10

MR. WILCOX: Q. The fact is then that on Friday 29th October you sent the urgent telegram requiring the Council to consent to the permissive occupancy and the proposed works in support of the dredge, including the pipelines and levy bank by noon Monday, under threat of your dismissing men in the area; is that right? (Objected to.)

Q. The fact is that the telegram was sent on the Friday informing the Council that dismissal notices would be issued unless the Council consented by the following noon Monday? A. Yes. 20

Q. Did you consider that was a fair and reasonable course for a large public company such as your company to take? A. I did, in view of the fact that I believed the Council was blocking the permissive occupancy, and I wanted them to know that men's jobs were involved.

Q. Your company I think in the last couple of years made profits of several million dollars? A. Yes. 30

HIS HONOUR: Q. The Council, as I would understand you, did not give their consent either to the permissive occupancy or to the construction of the pipeline, is that right? A. I don't know, I don't know. We were doing this through the Land Board Maitland, who said "We have not got the Council's consent. Why don't you ask them where it is?" They apparently asked the Council's consent in these matters. 40

Q. Anyway, your company itself did not obtain that consent? A. We obtained the consent from the Land Board.

Q. Yes, but not from the Council? A. No.

Q. Whether there was such a consent, it was outside your knowledge? A. Yes.

MR. WILCOX: Q. You were aware that the Council had told the Land Board by telephone, confirmed by letter, that it was not prepared to give its consent?

A. I would not know.

Q. You mentioned briefly a report that was commissioned by your company in September 1971 from a company named International Engineering Consortium Service Pty. Limited? A. Yes.

Q. This was entitled "Report by panel of consultants on impact of the environment of mineral sand mining proposals at North Entrance, New South Wales"?

10

A. Yes.

Q. And the company sought advice of some eminent people in a number of fields in that panel, did it not? A. Yes.

Q. Including geologists, a professor of climatology, a professor of biology, a professor of zoology, and a professor of forestry? A. Yes.

Q. And these gentlemen were asked to prepare a report and to have their report back to you at a date early in November? A. Yes.

20

Q. So they had to do a fairly hasty job in about five or six weeks; is that right? A. Well, they agreed to do it.

Q. They agreed to do it, and in fact they prepared this report within that time? A. I don't know whether it was a hasty job.

Q. I suppose you have read the report? A. Yes.

Q. You would agree with me, would you not, that the report points out a number of very significant environmental features of the North Entrance Peninsula held under lease by your companies? A. Yes.

30

Q. For instance, it is said in the report that the Angophora forest is the finest stand of Angophora costata in the whole of New South Wales? A. Does it?

Q. Did you notice that? A. No, I did not.

Q. It is said, is it not----

MR. MILNE: He is now being cross-examined about the contents of somebody else's document. This is a matter that cannot go to his credit in any way.

40

MR. WILCOX: Q. You say you did read this report?

A. Yes.

Q. Did it affect your decision to proceed with mining over the whole of the lease areas held by your company? A. As I said before, we never intended to mine over the whole of the lease areas.

Q. Is it the company's present intention to mine over that portion of the lease areas other than the area red-hatched on the plan prepared in 1968?

A. No, it is not.

Q. Is it intended to mine over such of the area not red-hatched as contains economic minerals? 10

A. Not even that.

Q. What is the company's current intention?

A. The company's current thinking is this. We have been asked to exclude from our leases certain areas for the preservation of those areas. We know without being able to be specific, as well as the ones we have agreed to have excluded from our leases, we know that there will be quite substantial areas that are never mined. We know also, having commissioned that report, that it is desirable, and we can accept the responsibility of preserving this area as best we can, and handing it back to the Crown in the hope that they will go on preserving it. 20

Q. Had the areas which are not to be mined been defined other than by the red-hatched document?

A. The areas that are not to be mined have been defined fairly precisely in the first six months of operations on ML.44, because only in those first 6 months of operations is the development drilling of sufficient density as shown on that map to enable us to plan precisely what the dredge paths are. 30

Q. Have you not already designed a dredge path on ML.44? A. For six months.

Q. And you have done that by drilling which has already taken place? A. Yes.

Q. I suppose it is possible to continue a drilling programme and define the ultimate dredge path over the whole of ML.44, is it not? A. West of the road we have decided what we are going to drill on ML.44. 40

Q. The whole of the west of the road you have decided? A. Yes.

Q. Where is a plan to be found which shows what areas if any, west of the road on ML.44 that your company would not mine? A. The plan is in existence in Southport, and I would say that at least 30% of the area of ML.44 west of the road will not be mined.

Q. When did this plan come into existence?

A. In the normal planning for the operation of Plant 20.

Q. When did it come into existence? A. I would say October 1971.

Q. Have you ever placed it before the Council?

A. Certainly not.

Q. Have you ever placed it before any of the persons who have been opposed to dredging west of the road on ML.44? A. Certainly not.

10

Q. Have you ever placed it before the Minister for Mines? A. I don't think so.

HIS HONOUR: Q. May I inquire if it is included in the affidavit of discovery, or whether it should have been? There is a plan in existence at Southport, we understand.

MR. WILCOX: Q. So that we can understand this, this shows the area which will not be mined on ML.44 west of the road; is that right? A. Yes.

20

Q. You have known ever since October 1971 that this was a matter of very lively concern to the Council, have you not? A. We have indicated precisely ---

Q. You can answer the question. You have known ever since October 1971 that this was a matter of very lively concern to the Council, have you not? A. Yes.

Q. And before that date, have you not? A. I don't know.

30

Q. You knew it was of lively concern in July last year when the tree preservation order was passed?

A. If July is the date of the tree preservation order, then I knew it was of concern.

Q. Yes, you can accept it was 22nd July, the first resolution, and for the last two or three years, the Council has been from time to time asking your company to supply information about the areas proposed to be mined? A. Yes.

Q. And yet you have never seen fit from October 1971 to this day to send to the Council the document which shows the areas west of Wilfred Barrett Drive which are to be mined? A. At the preliminary hearing we indicated quite clearly, using this very

40

map, the path which the dredge would follow for six months on ML.44.

Q. As I understand what you are saying, you are saying that you have a document which shows the dredge path for the whole of ML.44 west of the roadway? A. Yes.

Q. You do not suggest, do you, that the information that you gave at the interlocutory application dealt with the whole of the area west of the roadway in ML.44? A. Well, it did, whether it appeared to or not.

10

HIS HONOUR: Q. Do you mean by that answer that the area which was shown on that plan you are referring to, which was before us at the interlocutory application, shows or marks out the whole of the area on ML.44 that it was the company's intention to mine?

A. No. At the interlocutory proceedings we attempted to show that we were going to carry out mining operations for six months, which would leave our operations outside that path which was required by various conservationist interests, but in arriving at this six-month programme we did in fact produce a dredge path for the whole of ML.44 west of the road, which we do have in Southport.

20

MR. WILCOX: Q. And which document has neither been produced to the Council nor to the Court? A. That is right.

Q. Is there any particular reason why you have not seen fit to give a copy of it to the Council? A. No.

30

Q. So far as you are concerned, the choice as to what areas will be mined and what areas will be left unmined is one which you would take yourself?

A. Yes I would. I believe this is the company's -

Q. Your attitude is that it is the company's business to make that choice? A. Yes, the company owns the lease.

Q. It is your attitude that the company will make the choice and it should be trusted to leave some of that natural vegetation there? A. I feel it is far more qualified to make the choice.

40

Q. Is it far more qualified than the panel of consultants that you engaged last year? A. Yes.

HIS HONOUR: I do not really think Mr. McKellar's views as to who it is should make this choice has much to do with this case.

MR. WILCOX: Q. I take it that within the company structure you are the person who makes the decisions as to what areas are to be mined and what areas are not to be mined? A. Ultimately you can take that view.

Q. Did you make the decision as to the areas which were to be cross-hatched in red on the plan that was sent to the Council in 1969? A. No, there were certain conditions placed on the person who did make the decision. It has to be representative as far as vegetation went, and it had to be low grade, and it had to be shallow country, in other words, not with high hills, so that if it is low level country it is easier to preserve in its natural state. 10

Q. And one of the very important considerations as far as you were concerned was whether the mineral there was worth mining? A. I said that. The grade was a factor.

Q. As a result of the report which you got from the consultants in November last year, has there been any change in the plan of the company as to the areas to be mined or left unmined in these leases? A. Naturally. 20

Q. There has been? A. Yes.

Q. In respect of ML.44? A. Not in respect of ML.44 specifically, but obviously we have gone to a great deal of trouble to collect a lot of expert advice, and we went to that trouble, which the Council did not, to help us to make the decision on what we were going to mine, and what we could best preserve. 30

Q. In respect of what areas has there been a change in plan consequent upon that report? A. The report suggests that the best area to be preserved is an area not along the road, which is the one we chose, but one along the lake's edge. Now we will naturally give very serious consideration to this, because it means, among other things, apart from being the best area to preserve, it is also much less costly from the company's point of view to preserve more easily preserved areas. It won't be - in my own opinion, it won't be as attractive for people driving down Wilfred Barrett Drive, but it will be easier for people to protect and it will be cheaper. 40

Q. And that is the big attraction - it is cheaper? A. Those are two of the main factors.

Q. What I asked you was whether the company had

already made any change in its plans as a result of the report? A. Not in ML.44.

Q. In respect of any plans which it is, has prepared in relation to the other leases? A. It has not enough drilling on the rest of the road area to do it.

Q. You as operations manager I take it are responsible for all of the leases being worked by the company? A. Yes.

10

Q. Including the Stradbroke Island leases?  
A. Yes.

Q. I take it that you visit Stradbroke Island from time to time? A. From time to time, yes.

Q. How recently have you been there? A. Within the last three months I would have been there.

Q. How frequently over the two years before that have you been there? A. I try to go to each area four times a year if possible.

Q. So we can say about quarterly over the last two or three years you have been to Stradbroke Island? A. Yes.

20

Q. I suppose you claim to know the Stradbroke Island area very well? A. Not nearly as well as I know a lot of the other areas, because it is a recent acquisition and because I got to know the others in the position of Chief Geologist. The chance of getting around areas as the Operations Manager are considerably less.

Q. The area that you have at Stradbroke Island includes a Hill called Yarraman Hill? A. Not that I know of.

30

Q. Have you never heard of Yarraman Hill?  
A. No - Yarraman Creek.

Q. Is there a hill near Yarraman Creek? A. It is a valley with hills on both sides of it.

Q. Will you look at these photographs and tell me if you recognise the area shown? I suggest they were taken in June 1970? A. They obviously come from a great many places.

40

Q. Can you recognise them as being various photographs of areas leased by your company in June 1970 in Stradbroke Island? A. I recognise that one.



HIS HONOUR: Q. Mark it with the letter X on the back of it? A. It is not within miles of Yarraman.

MR. WILCOX: Q. Put the letter B on it for identification. Is it included with your company's leasehold area? A. Yes.

Q. And that shows frontal dunes moving into swamp area, does it not? A. Yes.

Q. Will you look through the other photographs please? A. What am I to recognise them as? 10

Q. I am asking you whether or not they are photographs of areas leased by your company as of June 1970 on Stradbroke Island? A. There are two here which have our notice boards on them.

Q. Do you recognise them from that? A. Only insofar that if they have our notice boards on them they are on our leases somewhere on North Stradbroke Island, provided no one has moved the notice.

Q. Will you mark those C and D. Look at the others? A. The others do not have anything whereby I can fix their position at all. 20

Q. Do you recognise them as being within your leasehold areas? A. No, that is what I mean.

Q. You cannot? A. No.

Q. I want to ask you, do you regard the restoration which can be seen in these three photographs which you have identified, that is the B, C and D, as being acceptable restoration after sand mining? (Objected to.)

HIS HONOUR: As I understand it, one of the matters you have put is the intention to restore. If it is, it is irrelevant. Are not questions admissible to show what can be achieved? 30

MR. MILNE: But the evidence establishing that these photographs are photographs of pieces of land which the defendant's lease does not go anywhere near sufficiently far.

HIS HONOUR: Q. The photograph that you marked B, do you recognise that at all - if you cannot, certainly say so - as being an area within one of your company's leases? A. It is a typical picture. As to whether it is within our leases or somewhere else on North Stradbroke Island I would not be 100% sure, but it has nothing to do with mining or restoration. 40

HIS HONOUR: What about the other photographs?

MR. MILNE: He recognises them because they have signs on them. They could have been photographs taken anywhere. I submit there is certainly not sufficient identification.

HIS HONOUR: I think there is not enough in respect of Photograph B, Mr. Wilcox.

MR. WILCOX: In respect of C and D ---

HIS HONOUR: Yes, I allow the question. 10

MR. WILCOX: Q. I think on Stradbroke Island the position is that the land rises fairly steeply from the sea, does it not? A. No. There is a frontal set of dunes, the beach and a frontal set of dunes. Now that system is approximately 300 yards wide. Immediately west of that is perhaps 500 yards of freshwater swamp, west of that again being something better than half a mile from the beach. The land rises up to ---

Q. 300 feet? A. Well, the first rise is to about 150. Ten miles at the back of the island I think the high points on the island, is 600 feet plus. 20

Q. The first rise is about 150 feet? A. Yes.

Q. Is that near Yarraman Creek? A. It is right down the island. That is the general shape of the island.

Q. Is that the area which was mined in about 1965-66? A. Once again it was before my company took over this area. It was a Conzinc Rio Tinto Operation, but that would have been about right. 30

Q. Of course, the height of that rise and the general slope of the rise is fairly similar to the rise on the North Entrance peninsula? A. Yes.

Q. The position is that very great difficulties have been experienced in obtaining suitable revegetation there? A. None at all, none at all.

Q. Is your manager up there at the present time a Mr. Morris? A. Yes.

Q. Do you remember an inspection that took place in December last year by a Senior officer of the Mines Department in Queensland? A. Yes. 40

Q. Were you advised of a requirement of the

Q. I am suggesting this is on a sandhill, and I suggest it is in an area which was held by your company on lease in June 1970? A. You are suggesting all that?

HIS HONOUR: What he is asking you is do you agree with that or not?

MR. WILCOX: I am asking the witness to assume that.

MR. MILNE: To assume that what he is now going to talk about is on his company's lease at Stradbroke Island. 10

MR. WILCOX: Q. There is a hill about 150 feet high which you have already described on Stradbroke Island? A. The full 35 mile length of the island, a range.

Q. Did your company hold portion of that hill on lease in June 1970? A. Yes, a very small part of it.

Q. Was that a portion which had been mined in about 1965-66? A. Did we mine a bit of our hill on our lease? 20

Q. No, had it been mined? A. Yes.

Q. What I suggest to you is that on that area which had been mined and which was held by your company under lease in June 1970, the approximate slope of 15 degrees, the coverage was the figures I have given you? A. That is what you suggest. I do not agree.

Q. Do you agree that once one gets to a 25-degree slope, the living cover is down to 15%, dead cover 10% and area exposed 75%? A. I have never seen a mined area by this company of 25 degrees slope. It is a fierce slope. 30

Q. Do you know the slope on the North Entrance peninsula, the maximum? A. About seven degrees.

Q. I suggest to you there is an area of 45 degrees? (Witness laughs.)

Q. That is quite ludicrous, is it? A. Yes, it is. 40

HIS HONOUR: Q. The slope is from the horizontal?  
A. Yes.

Q. Aren't there sandhills steeper than 25 degrees?  
A. Not stable covered dunes.

Q. Do you know Foresters Beach near Terrigal?

A. Yes.

Q. Do you know in recent years there have been quite a bit of residential work there? A. Yes.

Q. And there are quite steep sandhills there?

A. They look it certainly, but they are somewhere between 15 and 20 degrees, and they look tremendously steep. The angle ---

MR. WILCOX: Q. It is quite ludicrous to suggest that there are slopes as steep as 45 degrees on the North Entrance peninsula held under mining lease by your company? A. And covered by vegetation.

10

Q. Whether it is covered by vegetation, are there slopes of 45 degrees? A. On the front where there is an unstable dune situation with the sand coming down all the time, it could be. But you are talking about rehabilitation.

Q. What about west of the road? A. Once again provided you have vegetation on it.

20

Q. Are there areas west of the road with slopes as steep as 45 degrees? A. No.

Q. Would you care to read the two paragraphs under the heading 4(2) page 9 of the International Consortium's report and tell me whether you still maintain there are no such slopes? A. I still maintain that no such slope exists.

Q. So the statement that is there made, that west of the road slopes as steep as 45 degrees is wrong, is it? (Objected to; rejected.)

30

Q. You assert, do you, that notwithstanding what you have just read, there are no slopes as steep as 45 degrees? (Objected to.)

HIS HONOUR: The question simply is, you have read the document - do you still adhere to the statement you have made?

MR. WILCOX: Q. I will put it that way. You have read the two paragraphs to which I referred in the report. Do you still adhere to the statement that there are no slopes as steep as 45 degrees? A. I still adhere to the statement.

40

Q. Your company did some mining at Soldiers Beach near The Entrance did it not? A. No.

Q. Did the company carry out some mining at Soldiers Beach? A. Not that I know of.

Q. The company has carried out mining on the frontal dunes or near the frontal dunes on ML.42, has it not? A. Yes.

Q. Has the company had complaints from the Department of Fisheries about disturbed sand being pushed down to the lower part of the -- (Objected to.) A. I don't know about that.

10

Q. Is Mr. Wells still associated with the local operations at Wyong? A. Not really, no. Well, he is in charge of them in a broad sense.

Q. What is his present position? A. Manager of mining operations.

Q. He is based at Southport? A. Yes.

Q. Does he have a greater acquaintance on detailed operations and things like that? A. Yes.

(Report tendered as a document that has been considered by the company, and which they say they will take into account in some way - objected to.)

20

HIS HONOUR: Mr. Milne, do your clients rely upon the obtaining of that report as a discretionary defence in this matter?

MR. MILNE: No, your Honour.

HIS HONOUR: I reject the tender.

(Report by consultants to the defendants, m.f.i. 3.)

(Further hearing adjourned until 10 a.m. on Thursday, 24th February, 1972.)

30

IN EQUITY

CORAM: HOPE, J.

WYONG SHIRE COUNCIL v. ASSOCIATED MINERALS  
CONSOLIDATED LIMITED & ANOR.

FOURTH DAY: THURSDAY 24TH FEBRUARY, 1972

MR. WILCOX: I did finish my cross-examination yesterday afternoon, but there is something else I wish to ask Mr. McKellar.

JOHN BRUCE McKELLAR  
On former oath:

HIS HONOUR: You are still on the same oath? 10  
A. Thank you.

MR. WILCOX: Q. Your company maintains research laboratories, does it? A. Yes.

Q. Are they at Southport? A. Are you talking about chemical research?

Q. Yes. A. Yes, at Southport.

Q. I think one of the activities in which the company is engaged is in research into the benefaction of ilmenite? A. Yes.

Q. Is the purpose of that process to upgrade ilmenite so that it has many of the properties of rutile, and in particular a higher grade of titanium dioxide? A. Yes, to bring it up to the same as rutile, yes. 20

Q. The long-term aim is that if rutile is not available, upgrading ilmenite might be used to take its place for industrial purposes now dependent on rutile? A. Yes.

Q. I think there are vast reserves of ilmenite particularly on the Western Australian Coast? 30  
A. Yes, there are.

Q. Would it be correct to say that your company is in the forefront in Australia of research into this subject? A. I am afraid we are not. There are several companies which appear to me to be ahead of us.

Q. Is this matter of research fairly general in the industry upon the subject? A. Yes.

Q. I suppose overseas as well as in Australia? 40  
A. Yes.

Q. I suppose the point at which it is going to pay to use ilmenite rather than mining low-grade

rutile depends on the outcome of the research and the technique which is evolved in this research?

A. Yes.

Q. But a very heavy concentrated effort is being put on that subject at the present time? A. It is.

Q. In your affidavit, in paragraph 2, the affidavit you swore in December, you gave the company's output figures for the year ended 30th June 1971 --

HIS HONOUR: Do you want Mr. McKellar to look at his affidavit? 10

MR. WILCOX: Yes, it was tendered as Exhibit 23. (Handed to witness.)

Q. You see there are various figures which are identified as details of operations of the group for the year ended 30th June, 1971? A. Yes.

Q. So this is the total output of Associated Minerals group? A. It is.

Q. 117,000 tons of rutile and 110,000 tons of zircon? A. Yes. 20

Q. They would be fairly typical annual tonnages achieved by your group over the last few years?  
A. Yes, they would.

Q. Approximately of that order? A. Yes.

RE-EXAMINATION:

MR. MILNE: Q. Yesterday at page 64 you were asked some questions by Mr. Wilcox about restoring the contours to the land; do you remember that?  
A. Yes.

Q. And you gave an answer, about the centre of the page, in which you included a third category, namely a category of where a local Council asks you to restore the land in a flat way for sports grounds and things of that nature? A. Yes. 30

Q. Were you referring specifically then to any request that has been made by the Wyong Council in respect of the subject leases to restore the areas flat, to be suitable for sporting activities?  
A. Yes. Wyong is an example of this activity, in that we left two areas levelled and with the necessary embankments and one thing and another, for two ovals on North Entrance peninsula. 40

HIS HONOUR: Q. Was this pursuant to written

correspondence? A. Yes, there is correspondence on the subject.

MR. MILNE: Q. I am not quite clear about where the ovals are? A. The negotiations ---

Q. No, would you tell me where the ovals are?

A. At the southern end of the Tuggerah peninsula in the two small leases which are not the subject of this action. I am almost sure that the northern of the two ovals actually goes across into ML.42. 10

Q. But you are not certain of it? A. No, I am not.

Q. In any of these areas, ML.42, ML.48 and ML.51, were there any requests made by the Council of your company to deal with the mined areas in any particular way? A. Yes, the Council had various uses that they wanted to put the land to. They had a garbage disposal problem and they wanted to use the area for that, as I recall. And the other areas which are mentioned earlier for sewerage disposal schemes, of course --- 20

Q. Were they instances where they asked you to -

HIS HONOUR: Mr. Milne, if you are going to rely on this, there obviously must have been some correspondence. There was some correspondence about the garbage disposal. Could we have the documents?

MR. MILNE: I think the next witness will probably know more about it. The only documents I know of came out of council records.

HIS HONOUR: There is some reference in the correspondence about the garbage disposal. 30

MR. MILNE: Q. On page 65 you were asked about the development application you made for the two small areas to the south; do you remember that? A. Yes.

Q. And it was in effect put to you that at the time you made those, you knew there was a planning scheme and that the Council's consent was necessary?

A. Yes.

Q. Will you tell his Honour why you took that view in respect of those leases? A. It was the solicitor's view that we should lodge these. It was as simple as that. We asked for the advice and we got it, and we therefore carried out the procedure of putting in the applications. 40

Q. Did those leases contain any conditions different from the present leases? A. No.



Q. On page 69 you were asked, two thirds of the way down, you were asked whether a gentleman was at a meeting, who was the Shire President, and you said "A man who labelled himself as Shire President was not the Shire President". Who was that?

A. Mr. Hines.

Q. What did you mean by "a man who labelled himself as the Shire President"? A. We went to this meeting in November chaired by the Minister for Mines, and since the following day everybody knew that the Council election was irregular in some manner. I thought that it would have been fairer for him to have made that statement at that meeting, and say that in fact, while he possibly represented the Council, he was not the Shire Chairman.

10

Q. At page 71, three questions from the top, you were asked a question: "I know the contours will be there, but will there be rain forests?" and you said "On the question of the Angophora, that will certainly be returned. That is the Sydney red gum which was quite successfully regenerated in the Munmorah area"? A. Yes.

20

Q. Have you been to the Munmorah area recently?

A. Yes.

Q. Can you tell his Honour something about the regeneration there? A. Yes, we regard the ---

Q. No, can you tell us what did your company do about the regeneration? A. The process of regeneration starts when the tailings from the dredging unit are returned to the dredge, behind the plant. These are then contoured, using a bulldozer to return them to their original shapes and in particular to make sure that all slopes are stable, 15 degrees or less. Following that the top soil which has been stacked, stripped off the area to be mined and stacked alongside, is returned to the contoured tailings and spread over it, once again with bulldozers, and then follows - in the Munmorah area the normal practice has been to seed the area with a cover crop, a rye grass or some other form of quick-growing grass.

30

40

Q. What sort of machinery is that done with?

A. It is done with normal farming machinery, and it is subsequently fertilised, and sometimes fertilised and seeded from the air. It is a normal agricultural aerial top dressing system, by one of the air craft companies that do this work. Now, the initial cover crop of, say, rye grass protects the surface of the top soil from wind erosion and enables the seeds in that top soil, the native specy seeds in that top soil, to grow in a protected environment.

50

After about a year the cover crop has died off and the native plants are then strong enough and big enough to proceed with their growth. The addition is then made from the plant nursery, of planting all sorts of seedlings of native species which are grown in the nurseries in pots, to supplement the natural regeneration, and the ones that are grown in the nurseries are in fact usually generated from the seeds which are collected from the general area, in other words, they are native seeds. I am not sure of the practice at Wyong, but in most areas this is a job for school children in their holidays. They get paid so much a pound for banksia seeds, so much a pound for ti-tree seeds, and so much a pound for wattle seed. 10

Q. I think you have a nursery in this area?

A. Yes, we have a nursery at Munmorah.

Q. They are then planted by your staff? A. Yes.

Q. Have you recently been to Munmorah? A. Yes. 20

Q. Have you had some photographs taken of some parts of it? A. Yes.

Q. (Approaching.) I want to show you a photograph which I will mark No. 1 on the back in a circle. Do you recognise that photograph?

A. Yes, it is Munmorah.

Q. What is the island that you can see?

A. That is Bird Island in the background.

Q. You see the foreground of the picture?

A. Yes. 30

Q. Is that an area that has been mined? A. That has been mined, yes.

Q. What is the growth on it now? A. Mostly coastal wattle. Beyond that are various ti-tree species, and probably all through that wattle, and some of the old rye cover grass.

Q. The half way mark in the picture, the growth looks to be much greater than it does in the rear of it. What is the explanation for that? A. There are actually two dredge paths. In the foreground the plant was going towards the right of the photo, and then it turned outside the limit of the photo and went towards the sea, towards the left of the photo. The middle distance, light green vegetation is the cover crop that I speak of, which is the first stage of protecting the top soil until the native species flourish. The far distance shows some top 40

soil spread without the cover crop yet being evident, and the foreground is an older stage of mining where the cover crop has died and the native species are coming through and are established.

Q. About how long ago would that foreground have been mined? A. Some thing like  $2\frac{1}{2}$  years.

Q. What about the green area that you see?  
A. Probably a year to 18 months.

HIS HONOUR: I will make all these photographs Exhibit 24. 10

Q. That is the Pacific Ocean there, is it?  
A. Yes.

MR. MILNE: Q. I show you No. 2. Do you recognise that? A. Yes.

Q. Is that again the Pacific Ocean? A. Again the Pacific Ocean.

Q. Has the area in the very foreground of that photograph been mined? A. No, it has not.

Q. Can you indicate on that photograph where the mining operations commenced? A. The mining operations commenced in this area, beyond the white sand in the vegetation about the middle background. 20

Q. About the middle background? A. Beyond that is a dark green strip of old rehabilitation, and beyond that again is a brownish strip of fairly recent cover crop revegetation, and in the right hand corner of the brown is the light green of new cover crop.

Q. Now I show you No. 3. Has the area to the left of the dividing line that you can see almost in the centre of the picture been mined? A. Yes. 30

Q. Does that include the area right to the bottom of the picture? A. Yes.

Q. So the tree that you see in the very front of the picture is regrowth? A. It is.

Q. The darker colour that you can see, that is all regrowth? A. Yes, with the exception of the sky-line in the left hand corner, the grey sky-line is unmined ground. 40

Q. About how long ago would that have been mined - that is to say the darker? A. About three years ago.

Q. Then the area to the right, has that been mined? A. Very much newer, mined about a year to 18 months ago.

HIS HONOUR: Q. What type of tree is that?

A. A coastal wattle.

MR. MILNE: Q. What are the other trees I point to, the darker ones? A. There are various wattles and a lot of ti-tree with a much finer leaf. There is a fair spread of the native species that was there originally.

10

Q. I just want to ask you this general question about the two you have already looked at, and No. 3. Prior to the mining of that area were there any trees on that area which were different from what you see in the rejuvenated part of the various pictures? A. From place to place there were some gum trees. They are in there, but you cannot identify in that sort of a photograph, in other words, the gums regenerate but they take a little bit longer than this immediate natural cover of ti-tree and wattle and banksia.

20

Q. Are you able to tell me when these photographs were taken? A. They would have been taken in the last three months. I cannot go any closer than that. They might have a date on the back.

Q. No. You see photograph No. 4? A. Yes.

Q. Do you recognise that? A. Yes.

Q. Is that part of Munmorah? A. Yes, that is the ocean side of Munmorah.

30

Q. You see the rather coarse-looking grass that is growing in the picture? A. Spinifex.

Q. Is that an area that has been mined? A. Yes.

Q. Can you tell his Honour what has been done to cause that Spinifex to grow like that? A. The Spinifex is planted and seeded in exactly the same way as any other crop, fertilised, and is put there because it has a high salt resistance, and also it is the natural protector of dunes, in that it has a very complex root system, and it forms a mesh through the sand and it is very effective in the stabilisation of the frontal dunes.

40

Q. It is used only on frontal dunes, is it?  
A. Yes.

Q. The photograph I now show you is not in Munmorah, is it? A. No, it is not.

Q. Now No. 5. In the foreground of that picture where you can see the regeneration, is that an area that has been mined? A. Yes, that has been mined.

Q. About how long ago? A. I think about four years ago.

Q. If I may lead you on this - the area to the rear of it and to the left side of the picture is an area where some crop has been sown? A. Yes. 10

Q. What about the area towards the rear of the picture, upon which it appears that nothing is growing? A. That is the area that has been contoured with the 'dozers, and the light brown on it is people laying brush matting, which is just cut trees, laid down to give stability and shade and so on, to the new vegetation.

Q. Can you say by looking at that picture whether there is anything planted in that obviously white area? A. I do not think so. 20

Q. What about beyond the light green; is that an area that has been mined? A. No, I think that is unmined.

Q. I show you No. 6. Are you able to recognise that photograph? A. Yes.

Q. Where is it? A. It is at Munmorah approximately due east of the plant site, the office site.

HIS HONOUR: Q. Due east of ---? A. Due east of the office site. 30

MR. MILNE: Q. Has that area been mined? A. All except the sky-line and centre and slightly left of centre.

Q. What looks like a knob on the top of it?  
A. Yes.

Q. About how long ago was that done? A. Three and a half, four years that would be.

Q. That vegetation you see there is, I suppose, either naturally regenerated or some of it has been planted? A. Yes. 40

Q. And treated in the way you have described to his Honour? A. Yes.

Q. I show you No. 7. What is that a photograph of? A. That is a photograph of a small lagoon, beyond which is a totally mined and regenerated area of country, with the exception of some grey trees on the water's edge, and a big round tree. That area there on the right hand middle distance was not mined, but it shows in a sort of panoramic view the regenerated country which was mined about three years ago.

10

Q. And No. 8 I think is an aerial picture of part of Munmorah showing a crop-dusting aeroplane?

A. Yes.

HIS HONOUR: Q. Is that the same island that appeared in the earlier photograph? A. Yes, Bird Island.

MR. MILNE: Q. By looking at that, would you be able to tell his Honour about how long ago that photograph was taken, No. 8? A. I think it is about two and a half years ago. That is when the photograph was taken.

20

HIS HONOUR: Q. What is the heap that appears to the right? A. That is a heap of concentrate. The mine is immediately to the right of the photograph there, and the concentrate is pumped ashore into a heap for trucking away.

MR. MILNE: Q. Do you recognise No. 9? A. Yes.

Q. Is that an area that has been mined? A. Yes.

Q. About how long ago? A. That is three and a half years, I would think.

30

Q. You see some rather large trees on the top right hand corner of it? A. Yes, I do.

Q. Can you tell us what they are? A. They are Angophoras, regenerated naturally with the rest of the stuff.

Q. When you say "regenerated naturally", did you plant Angophoras? A. Yes, we grow them in the nursery. But these were self-generating. We did not help these in any way. They were in the top-soil.

40

HIS HONOUR: Q. When you say they were in the top-soil - under your lease you are required to take off the top-soil to some depth? A. Yes.

Q. Do you take it away and store it somewhere?

A. We push it to the side of the dredge path

and leave it in a big heap. Then the dredge moves along here, and when the tails have been contoured you spread it back. So the dredge path is at the same time being stripped of top-soil, mined and rehabilitated back here. The whole thing is a moving operation.

Q. When you strip, or start to mine, strip an area preparatory to mining where there is a substantial growth of large trees on it, whether they be Angophora trees or some other trees, what happens then? A. We are required in most leases to burn them, stack them and burn them. We are not allowed to sell them, or anything else. They are meant to what they call Windrow them, which is to stack them in long lines and fire them, with the appropriate advice to the local fire warden and so on, I think in a manner which is exactly parallel to clearing land for farming. 10

Q. You said 2½ years, did you? A. Three and a half years. 20

MR. MILNE: Q. No. 10 - is that another part of Munmorah? A. Yes.

Q. Are they the same trees in the last photograph or not? A. They are not the same trees. They are the same type, Angophora.

Q. Could you say how long ago that photograph was taken? A. Only as near as I say, 3½ years. Oh, the photograph would have been taken within the last three months. 30

HIS HONOUR: Q. Were they Angophoras which were naturally produced or were they planted? A. I think those again were naturally regenerated ones. I am going on the knowledge that only when they regenerated like this, so obviously successfully, did we then start producing them in the nursery, and this particular rehabilitation was virtually complete before we started planting-out Angophora, which are mainly on a different part of the lease from this one. I cannot be sure that the restoration crews did not decide they would put a couple here and there, which they do from time to time on bare patches, but I do not think so. 40

MR. MILNE: Q. You see some plant there which looks to me as if it has flowers on it? A. Yes.

Q. What is that? A. It is a ti-tree gorse type of thing, a native species.

Q. I show you photograph No. 11. Do you know where that photograph was taken? A. Yes.

Q. Where? A. That is the Laurieton Moorland road not far from Taree.

Q. Was the land on the left hand side of that picture mined? A. No, it was not.

Q. Was the land on the right hand side of that picture mined? A. Yes.

Q. About how long ago? A. Four to five years.

Q. Was that land on the right the subject of re-  
restoration work by your company? A. Yes, it was. 10

Q. And that is the sort of growth which happened there in the last four or five years? A. Yes.

(Eleven photographs tendered and marked Exhibit 24.)

Q. I asked you some questions, you remember, earlier this morning in relation to questions Mr. Wilcox asked you about two smaller areas to the site? A. Yes.

Q. (Approaching.) Is that the application for a special lease in respect of the area, namely No. 1614? A. Yes. 20

Q. You see the letter I show you, 28th March, 1969? A. Yes.

Q. Would you read that? A. Yes.

Q. You see the last page of it, "Special Schedule XC No. 1"? A. Yes.

Q. Had you ever received a lease with a condition similar to that on it from Wyong before? A. No.

MR. MILNE: I tender those documents, and also special lease application No. 1625. 30

Q. That was the other one down south? A. Yes.

MR. MILNE: And in each case, letters of 28th March, 1969.

(Applications for special leases No. 1614 and No. 1625 and letters from the Mines Department tendered and marked Exhibit 25.)

Q. You remember his Honour saying to you at page 71 yesterday, "I appreciate what you say about the 700 acres"? A. Yes, I do.



Q. Did you ever intend to convey to his Honour that there were to be 700 acres? A. No, I did not intend to convey there were.

HIS HONOUR: Q. You said, "Several hundred acres"?  
A. Yes, "several".

MR. MILNE: Q. At page 75 you said in effect that there had been in existence since last October a dredge path plan for that part of ML.44 which was west of the Wilfred Barrett Drive? A. Yes. 10

Q. Have you had that dredge path plan flown down to Sydney this morning? A. Yes, last night.

Q. Does the document that was in Southport, which you have had flown down, consist of four sheets to be joined on to each other? A. Yes.

Q. (Approaching.) Are those sheets which I show you the four sheets which go to show where the dredge path is to go on ML.44? A. Yes.

Q. Do those sheets have on the bottom of them, each of them, dates and - I am sorry, are the sheets numbered T.15, T.16, T.19 and T.20? A. Yes. 20

Q. Do they respectively bear the dates on the bottom of them, 21st July, 1971, 14th July, 1971, 20th July, 1971, and 12th July, 1971? A. Yes.

Q. Are you able to say whether that is the date on which the yellow lines were put, or is that the day on which the plans were drawn? A. That is the day on which the base plans were drawn, with the drill holes and drill results shown, and boundaries and roads and so on. The yellow dredge line indicating the path through this drilled area, as I recall, was done in October. 30

HIS HONOUR: Q. October 1971? A. Yes.

MR. MILNE: Q. Has there been a composite print of that? A. Yes, there has.

Q. Is that a completely accurate description?  
A. No, it is not a print of this. The base plan involved - there was the print on which the yellow stuff was taken, and there has been another print to make it composite. 40

Q. Is that T.16? A. Yes.

Q. Does that bear a date on the bottom?  
A. 14th July, 1971.

Q. Does that plan show that area of ML.44 west of the road? A. Yes.

Q. The red arrows - do they point in the direction of the dredge path? A. Yes.

Q. Is the unbroken dark black line the top edge of the excavation that will be dredged? A. Yes.

Q. Is the broken blue line next to it the bottom edge of the excavation that will be made by the dredge? A. Yes.

10

Q. If one follows the red arrows one can see the path that the dredge takes? A. Yes.

Q. It finally ends up coming out the southwestern corner into ML.51? A. Yes.

Q. Is there in addition a reduced and more simplified form of that plan? A. Yes, there is.

Q. Is that the third document that I now show to you? A. Yes.

Q. Does that show precisely the areas that will be dredged, and does it show the areas left in ML.44?  
A. Yes.

20

Q. Can you calculate, a rough calculation, how much of ML.44 will not be mined? ---

MR. WILCOX: I object to a rough calculation. If there is to be evidence on it, I suggest it should be precise.

HIS HONOUR: What is the rough calculation of?

MR. MILNE: What is not to be mined - in an acreage. He said yesterday he thought about 30%.

HIS HONOUR: I will allow it.

30

WITNESS: On a scale of 10 chains to the inch, the area west of the road of ML.44 is something like 200 acres, and the area which won't be mined at all would be something like 80 acres of the 200 acres, and the area that will be mined is something like 120 acres.

MR. MILNE: I now tender the four sheets marked T.15, T.16, T.19 and T.20.

(Plans marked T.15, T.16, T.19 and T.20 tendered and marked Exhibit 26.)

40

I now tender what I shall describe as the composite print of dredge path on ML.44.

(Composite print of dredge path on western part of ML.44 tendered and marked Exhibit 27.)

HIS HONOUR: Is this a different path from that path which is said to be the path to be followed up till the beginning of July? A. No, it is not. The area we wanted to mine was north of a line across there.

Q. "There" being approximately a line going across the middle of the western half of ML.44? 10

A. Coinciding with the green dotted line representing the conservationists' intentions for this area. And the six months to which I referred represented a run across outside that green line, and in fact the first leg of the dredge path.

Q. The top part on Exhibit 27 - the first cross-section of the run? A. Yes.

MR. MILNE: I now tender a reduced scale plan for the western part of ML.44. 20

(Reduced scale plan of dredge path tendered and marked Exhibit 28.)

Q. You were asked some questions at page 77 and following, about Stradbroke Island. Can you tell his Honour when you were last on your company's lease on Stradbroke Island? A. When I last was on them?

Q. Yes. A. Within the last two months.

Q. How long have you held those leases? A. We acquired them in March 1969 from another company that was operating them. We acquired in fact that company called Titanium and Zirconium Industries, which is a subsidiary of C.R.A. We acquired the lease, the equipment. 30

Q. At the time you acquired them, had some of the area been worked? A. Yes, they had been working on those leases for many, many years.

Q. Had any restoration work been done? A. Very little restoration work was done, in that when those leases were granted the Queensland Mines Department did not in fact make conditions of restoration. 40

Q. When you took it over were any conditions put on you? A. When we took it over we agreed, after negotiating with the Mines Department, that we would accept the most stringent restoration conditions.

Q. On the area that you mined, or on the whole of the area? A. The stringent conditions were to apply to all of the area which we mined, and we did agree that we would do our best to repair the work that had been done in the many years of operations beforehand.

Q. When did you actually take over? A. March 1969.

Q. Did you commence any operations there then to restore the area that had already been mined? 10

A. Yes, we did. There was one plant operating on the frontal dunes, and there was one plant operating in the 150 ft. high dunes.

Q. You are talking about - when you use the word "plant" you mean --- A. Mining dredge. The one in the 150 ft. high dunes, the previous company had made early attempts at restoration. We continued these attempts, we continued the operation, taking the dredge down out of the high dunes, and in fact closing that one down. We subsequently introduced a much bigger unit into the high dunes at a different point. 20

Q. Do you remember when you first took it over in March 1969? A. Yes, I do.

Q. In your opinion what was the standard of the restoration that had been carried out up till then?

A. A lot of sort of patchy attempts had been made, some of them successful, some unsuccessful.

Q. How does it compare, when you last visited it, with what it was like in March 1969? A. Well, it was - when I last visited it, which was within the last couple of months, it was a very high standard restored area with a completely stabilised land surface, with all the various native species growing well. One other factor I should mention - that at the time that we took it over in 1969, through to the summer of 1970, that whole section of the coast and pretty near down to Newcastle in New South Wales, had suffered about four years of drought, so their attempts to restore the area were undoubtedly made much more difficult by the drought conditions. Since then we have had good seasons, and as I say, the present condition of that old dredge path that has been restored is very good indeed. 30 40

Q. At page 79 it was put to you, a statement was put to you, "Q. Do you know a stretch, a 2-mile stretch of frontal dunes on Stradbroke Island which as at December last year had not been rehabilitated at all after mining?" and you said, "Yes, I 50

do. Q. In your lease area? A. Yes. Q. Would this be a true statement, which I suggest to you was made by Mr. Morris" - and that was objected to. You were asked "Q. You can possibly say whether the statement is true. Is it true that nothing had been done in that two-mile stretch regarding rehabilitation; the rate of progress of the mining plant was greater than the rate of progress of the rehabilitation? A. Yes. Q. And that was mining done by your company after it took over the lease, wasn't it? A. Yes." A. Yes. 10

Q. What is the explanation for that? A. The plant that is referred to there, the dredge that is referred to there, since late 1969 I think, early 1970, has worked up about 8 miles of the frontal dunes. It has proceeded along this area. In early 1971 I think, we had a severe cyclone in that area and there was a considerable amount of damage done to the frontal dune, both the untouched part that had never been mined, and our restored areas. The Mines Inspector viewed this, and we said that with the number of personnel and equipment available we should make every attempt to repair the restoration, otherwise it would get very much worse, and he therefore agreed that we should carry out this repair work at the expense of the work immediately behind the plant, on the condition of course that we made up the backlog of new work. And at the time you are talking about there was in fact a big area immediately behind the dredge where the restoration work was behind schedule. 20 30

Q. Has that been caught up with since? A. That is currently being caught up with. It is not yet completely caught up with.

Q. You took off the material behind the dredge, and put it back on the other stretch to repair it?  
A. Yes.

FURTHER CROSS-EXAMINATION:

MR. WILCOX: Q. I suggest to you that the total area in ML.44 west of the road, and excluding the lake shore, is 270 acres. Do you agree with that? 40  
A. If you say so, yes. I worked it out roughly as 200 acres I think.

Q. Do not take my word for it, but you might care to look at the break-up which is shown in your consultants' report. I invite your attention to the second item in each of those (handed to witness).  
A. 251 acres.

Q. 251 acres is in the category "Area to be mined west of the road in ML.44"? A. Yes.

Q. And the 19 acres is the area that is not to be mined, being the oval-shaped red-hatched area in the earlier plan that was prepared? A. I don't know if I have the wrong table.

Q. (Approaching.) You see the table refers to Figure 1 to the report, which I will open out. You see a copy of the red-hatched plan? A. Yes.

10

Q. In the category "Areas not to be mined" it breaks up those areas into six separate areas?  
A. Yes.

Q. One of which is described as "Isolated area west of the road"? A. Yes.

Q. That is obviously the oval-shaped area on ML.44? A. Yes.

Q. And it gives the acreage there as 19? A. Yes.

Q. Your dredge path plan shows that you are in fact going to leave that 19 acres and go around it before you depart from ML.44? A. Yes.

20

Q. The remainder of ML.44 west of the road is put at 251 acres? A. Yes.

Q. You would accept those figures, coming as they do from this report? A. Yes, I would think so.

Q. I understand you, that if the company is permitted to carry on working with the dredge that is presently on ML.44, it would simply follow the dredge paths which are shown on the documents that have been tendered this morning? A. I could not guarantee that, because as you will see, if for instance we could not go into ML.51, we cannot leave the dredge in the south-west corner. It has to be taken to pieces, so there would be some modification in that event.

30

Q. But completely unimpeded by any legal restriction, the company would simply follow the dredge paths tendered this morning in relation to the western part of ML.44? A. Yes, it would.

(Witness retired.)

40

THOMAS WESLEY THOMAS  
Sworn, examined, deposed:

TO MR. MILNE: My full name is Thomas Wesley Thomas. I live at 54 Woodroff Avenue, Main Beach, Southport.

Q. You are a drilling supervisor? A. Yes.

Q. You are employed by Associated Minerals Consolidated Limited? A. Yes.

Q. As its drilling supervisor, and you have got the responsibility for the supervision of the drilling of all the operations of the company and its subsidiaries? A. Yes. 10

Q. You have been employed with that group since February 1957? A. Yes.

Q. I think you are personally familiar with the mining leases, the Tuggerah mining leases? You know the four mining leases at Tuggerah? A. Yes, that is right.

Q. You having supervised and participated in some way in nearly all the drilling operations on them; is that correct? A. Most of them. 20

Q. Between November 1963 and March 1964 I think you supervised extended drilling operations on ML.42, 44 and 51? A. Yes.

Q. In which a considerable number of holes with a large footage were drilled? A. Yes.

Q. Have you seen that land with the purple lines on it? (Approaching.) You see the purple line that runs across? A. ML.51 to ML.44.

Q. Did you supervise the drilling there? A. Yes.

Q. Do you remember how many holes were put down? 30  
A. I can't remember the exact amount.

HIS HONOUR: Q. How were they spaced? A. They would be on thirty yard spacings.

Q. There is a purple line on the southern end?

MR. MILNE: Q. I am sorry - what about the one on ML.42? A. Yes, there was a line at the bottom end of ML.42.

Q. So both of those purple lines you supervised?  
A. Yes, that is right.

HIS HONOUR: Q. Is that similar spacing on ML.44? 40  
(No reply.)

MR. MILNE: Q. Are they thirty yard spacings?

A. I am not sure, but I think they are.

Q. I think when you were there, your supervision - you dealt with all the doing of bearings for drill holes, and correspondence, and supervision of the men? A. That is right.

Q. I do not want you to tell us what the drilling procedure was, but it was a standard sort of drilling procedure that you used, was it? A. Yes, 10  
that is right.

Q. Later on did you go back there again in 1968?

A. Yes.

Q. Did you do some further drilling? A. That is right.

Q. Did you go there and do further drilling operations in the following month - in about July 1968, then from July through to June 1969? A. Yes.

Q. And then through to February 1970, March 1970, February to September 1971, and September 1971? 20

A. Yes.

Q. You remember all those? (Approaching.) Will you look at the legend on the side of this map here? You see the yellow with the black lines? Did you supervise all of those? A. I was not directly responsible for the supervision of these lines in ML.48. It was under the control of the mining engineer.

Q. Who was that? A. Mr. Foster.

HIS HONOUR: Q. Which lines on ML.48 are you referring to - the black unbroken lines or some other lines? 30

MR. MILNE: The black dots over the yellow.

HIS HONOUR: Q. The ones that go immediately across?

A. Yes.

MR. MILNE: Q. What about the ones on ML.42?

A. We did some check holes on ML.42, which were under my supervision.

Q. If you did not supervise, did you have anything to do with the holes that were done on ML.48 and ML.51? Do you see the yellow with the black? 40

A. Yes.

Q. I want to get it clear from you what you did.



Have you any independent recollection yourself of what you did or not? A. Well, they were drilled between the periods you asked me earlier, in July 1968 and September 1971.

Q. In other words, you supervised all the drilling that was done on those leases during that period, did you? A. Yes, I supervised the men. There was another chap down there.

Q. I am sorry - when I say "supervised the drilling", you supervised the men who were doing the drilling? A. Yes. 10

HIS HONOUR: Q. Just looking at that plan, Exhibit 5, that is in front of you there, there are some yellow lines with black broken lines going across ML.51. Did men whom you were supervising do any drilling along those lines in the period from July 1968 onwards, or was that drilling so far as you were aware, done before July 1968? (No reply.)

HIS HONOUR: Q. You might see that in the legend on the right bottom of the plan, they could have been done any time between July 1964 and February 1970. I am only asking you whether you know whether what appears on ML.51 was done after July 1968. If you do not know, say so. A. I don't know. 20

Q. Go down to ML.48, where you see there are similar lines, and some lines only go across to the road, and some go further towards Tuggerah Lake. Are you able to tell us whether any of that work was done after July 1968, or whether it was done before? A. Yes, it was done after July 1968. 30

Q. Then go down to ML.42. There are similarly a lot of yellow and black lines. Are you able to tell me whether that work was done after or before July 1968? A. I think most of it was done after July 1968.

(Short adjournment.)

CROSS-EXAMINATION:

MR. WILCOX: Q. You told us about drillings in 1963 and late 1968/69. On each of these occasions you took samples of the material in the ground for assay purposes, did you? A. Yes. 40

Q. And then you handed over the samples in small bags to somebody else in the company to have assayed? A. The drilling samples were forwarded to the laboratory for assay.

MR. MILNE: I have no questions to ask in re-examination.

(Witness retired and excused.)

ANDREW ARCHIBALD WELLS  
Sworn, examined as under:

MR. MILNE: Q. Is your name Andrew Archibald Wells?

A. Yes.

Q. Do you live at 6 Carcoola Street, Benowa in the State of Queensland? A. Yes.

10

Q. Are you a mining engineer? A. Yes.

Q. And are you the manager of the mining operations of the Associated Minerals Consolidated group of companies? A. Yes.

Q. I think you are a graduate of the University of Melbourne and you have the degree of Bachelor of Engineering? A. Yes.

Q. And you got that in 1950. I think you are also an authorised mines inspector under West Australian legislation? A. Authorised mine surveyor.

20

Q. You had a number of years experience in metalliferous mining in West Australia prior to commencing activities in the beach sand mining business in the eastern states in about May, 1966? A. Yes.

Q. And from May 1966 till to the present time you have been solely engaged on beach sand mining activities? A. Yes.

Q. From June 1967 until January, 1970 you were the District Mining Manager responsible for all the defendant company's mining operations on the Tuggerah leases? A. Yes.

30

Q. This is from June 1967 to January, 1970. Were you at Tuggerah or were you in charge of the Tuggerah --- A. Yes.

Q. Did you live there? A. I lived in the Munmorah area. I was responsible for mining operations in the Munmorah and Tuggerah areas.

Q. So you had an intimate knowledge of both areas between those two dates? A. Yes.

40

Q. You can, if you are asked give the details of the mining operations of the dredges at Munmorah

T.W. Thomas, xx, ret'd.

and of the dredge in the southern portion of the Tuggerah leases while you were there? A. Yes.

Q. Since then, of course, I think you have been in overall charge of that operation because of your present position? A. Yes.

Q. And you have been down there often since you ceased to be a resident of Munmorah? A. Yes.

Q. I want to take you to early in 1967. Do you remember that in company with Mr. McKellar you attended an inspection down on the Tuggerah leases when there was a group of people there including the Member of Parliament and members of the Wyong Council and various Ministers present? A. This was late in 1967.

10

Q. Late in 1967? A. Correct.

Q. Do you remember then that various discussions took place of which you can give evidence if you are called upon to do so? A. Yes.

Q. After that happened I think the Lands Department offered to prepare a mechanical survey of the peninsula and record the findings? A. Yes.

20

Q. And later still you became aware that the various conservation groups had indicated trees that they wished to be preserved? A. Yes.

Q. And your company, I think prepared a plan showing the areas that you were prepared to release?  
A. Yes.

Q. And those plans, I think, were at a later point of time sent to the Council and various other authorities? A. Yes.

30

Q. In July, 1968 was there another meeting?  
A. Yes, the conservation groups.

Q. Were members of the Council there? A. I do not think so.

Q. Then again in October, 1968 were there further meetings? A. Yes.

Q. The same group of people? A. Yes.

Q. Were they addressed by anybody? A. They were addressed by the manager of mine planning for Associated Minerals Consolidated, Mr. H.J. Surman.

40

Q. Did you during those years, 1967, 1968 and

1969 from time to time have conversations with various of the Shire Councillors and/or various officers of the Council.

Q. Were they frequent discussions or were they periodic or ---- A. Periodic I would say would be a better description.

Q. I want to take you to the time when you had the dredge come on to the southern most of the Tuggerah leases. That was about June, 1969, wasn't it? A. Yes. 10

HIS HONOUR: You mean on the four leases we are concerned with? That is ML.42 also?

MR. MILNE: Yes.

HIS HONOUR: Because there are more to the south.

MR. MILNE: But small ones, yes.

HIS HONOUR: Q. June, 1969, was it? A. Yes.

MR. MILNE: Q. After that dredge went on to those leases in June, 1969 did officers of the Council from time to time come down there and have discussions with you about it? A. On one particular occasion. 20

Q. Who was that gentleman who went down do you remember? A. The President of the Council and, according to my memory about nine other Councillors and officials of the Council and consultants to the Council.

HIS HONOUR: Q. Do you mean ten people in all approximately or ---? A. No; there might have been fifteen.

MR. MILNE: Q. Can you fix that date? A. No I cannot fix that day. I know that it is in the spring of 1969. I would have said most likely in the month of September. 30

Q. I want to take you to an occasion shortly prior to that when some of the Council officers - do you know a Mr. Escott? A. Yes.

Q. He is the Shire Engineer isn't he? A. Yes.

Q. When he came down and other people and had a discussion about what was going on? A. Specifically the discussion dealt with the proposed establishment of some sporting ovals in areas south of ML.42 and - I am not sure; I would have to refer to a plan - possibly on ML.42 as well. 40

HIS HONOUR: Q. When was this? A. May, 1969.

MR. MILNE: Q. That was prior to the dredge coming there? A. That was while the dredge was being constructed there. Also an official of the company - I organised a meeting between an official of Associated Minerals, the district engineer and a member of the engineering staff of Wyong Council with respect to the placing of a water pipe across Wilfred Barrett Drive for the purpose of transferring water from Tuggerah Lake to the eastern side of ML. 42 for the purpose of floating and operating the plant that was being constructed at that place and time. 10

HIS HONOUR: Q. When was that conversation?  
A. I would say April, 1969.

MR. MILNE: Q. In any event on any of those occasions on which you have already spoken did anybody ever suggest to you that any consent was needed of the Council to do what you were then doing? A. No.

Q. In the Spring of 1969 you told us that you had this meeting. You think about ten Council people were there including the Shire President. Was the Health Inspector also there? A. Yes. 20

Q. He is a Mr. Bailey? A. Yes.

Q. The Shire Engineer, Mr. Escott? A. Yes.

Q. They were there? A. Yes.

Q. On that occasion were there discussions about sewerage and disposal works? A. Yes.

Q. Where did that meeting take place? A. It commenced in the southern portion of ML.42 and during the course of the day extended to several other points extending up into ML.48. I think that is the adjoining lease. 30

Q. At that time where was the dredge operating?  
A. It was, I think still in ML.42 but very close to the southern boundary with SLA.1614 and 1625.

Q. It was going in a southerly direction?

A. It was going in a southerly direction.

Q. Did the Shire President or any of the gentlemen who were present indicate where it was they wanted to put the night soil, the sewerage works? A. They referred to a plan prepared by the health inspector which indicated an area, - and again my memory I will have to rely on - about 50 acres I think on the western side of the peninsula in ML.42 and ML.48. 40

Q. Was that an area that had already been mined?  
A. No.

Q. Did they make any request of you in respect of that 50 acres? A. I think the proposal was - they anticipated that we would not be mining the area and therefore this would be a suitable area to place a night soil and rubbish disposal area ---

HIS HONOUR: Q. This applies to both? Not only sewerage but also - A. Night soil, yes. 10

Q. But also to the disposal of rubbish? A. It was a proposal they were considering.

MR. MILNE: Q. Did they make any request of you to do anything with that 50 acre area? A. I think they wished me to accompany them to show them where it was and to indicate to them whether we had mining plans on it. I indicated that a portion of it would be part of my mining path. I also clearly stated that I was not in a position to negotiate and make decisions on the site, that this was purely an information-gathering meeting, that the Council would have to communicate with my head office in Southport for any further negotiation which would lead to a finalisation of any matters raised. 20

Q. Did you make some suggestion? A. It appeared to me ---

Q. No, did you make some suggestion? A. I made a suggestion.

Q. To put it somewhere else? A. Yes.

Q. What was the suggestion? A. That the night soil and rubbish dump be sited on the eastern side of Wilfred Barrett Drive in ML.48 because I considered adequate space existed there until September as the southern dredge had arrived at that point. Consequently from then on opportunity existed for the use of mined ground for the further expansion of such works. 30

HIS HONOUR: May I enquire whether at that stage - that is September, 1969 - you had a dredge path planned in respect of ML.42, ML.48 or ML.51? 40

A. A specific path, no; a general path, yes.

Q. Is there any specific one in existence now?  
A. Yes.

MR. MILNE: Q. Was a rubbish tip ultimately established? A. Yes.

Q. Where was that? A. ML.42.

HIS HONOUR: Q. In the 50 acre area? A. No.

MR. MILNE: Q. Not in the 50 acre area? A. No; nothing happened in the 50 acre area.

Q. Is that rubbish tip area on a piece of land that has been mined or on a piece of land that has not been mined? A. It commenced and still is on unmined ground.

Q. What sort of an area does that cover now?

HIS HONOUR: You mean size?

10

MR. MILNE: Q. Yes, size? A. Several acres.

Q. Did you ever attend any meetings of the Council about these mining operations? A. On two occasions.

Q. Do you recollect when they were? A. In October, 1968 I attended in company with Mr. J.B. McKellar, the then Manager of mining operations of Associated Minerals, I accompanied him to a meeting at Wyong Shire Council Chambers.

Q. I do not want to know what was said, but I think a series of questions were asked, were they?  
A. A series of questions were asked of Mr. McKellar on what the general mining plans of the company were in the area.

20

Q. When was the second one that you attended?  
A. May or early June in 1969 in company with Mr. J. Pinter, Managing Director of Associated Minerals Consolidated Limited.

Q. I think you attended that meeting at the invitation of the Council? A. Yes.

30

Q. And again I think there was a discussion about the future proposals of the company? A. Yes, in general terms.

Q. Were you responsible as from 1967 until 1970 for the restoration of the Munmorah areas? A. Yes.

Q. Just see if you agree with this, that what used to happen was after the tailings came out the area would be contoured by machinery, the top soil would be put back, there would be a sowing of the area either by some farming implement or from the air and a fertilizer given to it, it would be seeded and perhaps trees would be planted on it on some occasions? A. Yes.

40

Q. And I think that the company had a place where these small trees were growing? A. Yes.

Q. What has the rate of rejuvenation been? I withdraw that. Do you know the Stradbroke Island leases? A. Yes.

Q. When were you last there? A. 11 days ago.

Q. Would you describe to his Honour the rejuvenation that has taken place as you saw it on Stradbroke Island 11 days ago? A. There are two general areas, one which relates to the coastal dune and another which relates to high dune areas lying west of the coastal dune areas. We have a large operation proceeding in the coastal dune areas in the central part of the island. This operation commenced about two years ago at the southern end of the island and has advanced along the coast down a distance of approximately ten miles. The first eight miles of that advance has been stabilised and is in fact more stable than it was before. There are approximately two miles of unstabilised land behind the plant. The reason for this was that in February 1971 a cyclone, I believed named Dora, on February the 17th hit North Stradbroke Island and caused considerable damage to newly established rehabilitation. In the months following we had to return over these areas to repair them. This caused this present lag. Active plans are afoot at the moment to catch this lag up in a relatively short period of time, approximately six months.

The other mining area, and this was commenced in October, 1966 when I was then employed by Titanium and Zirconium Industries as a senior mining engineer, one of my responsibilities was the commencing of rehabilitation activities in the high dune mining area. I left the company shortly after this work commenced. In 1970 I again became involved with the rehabilitation progress of this area which by that time had been mined, completed and had been contoured and the majority of the rehabilitation work having been completed except for the final planting and brushing. The area at present has been completed as far as planting and brushing is concerned and is now completely stable.

Q. So in other words what you are saying in answer to my question is that the area has now been stabilised? A. Yes.

CROSS-EXAMINATION:

MR. WILCOX: Q. Did you occupy your present position in June, 1970? A. Yes.



Q. And in that position you were responsible, amongst other things for restoration on Stradbroke Island? A. Yes.

Q. Of the area contained in the company's leases?  
A. Yes.

Q. Do you recall a visit being paid to Stradbroke Island by a team of four scientists from Brisbane led by a Dr. Webb of the C.S.I.R.O.?

A. Not directly. There was a visit at that time, the composition of which I am not certain. 10

Q. But you were informed that a visit had been paid to your island and to your leases, were you?

A. By a group of people. I cannot recall their names.

Q. You know Stradbroke Island fairly well then, do you? A. Yes.

Q. I wonder if you would look at those five photographs (shown) and tell me whether you recognise them as being photographs taken, I suggest in June, 1970 of areas contained in your company's leases? A. Four of them I could identify; one, no. 20

HIS HONOUR: Q. When you say you identify them, do you mean you identify them as photographs of land within your company's leases? A. Yes.

Q. When you say no to the fifth one, do you mean you do not recognise it as anything to do with your company's leases? A. That is what I am saying.

MR. WILCOX: Q. Would you be good enough to pass back the one you do not know. Just look at the four you have in front of you and tell me if you can in respect of the areas shown in those photographs, how long prior to June, 1970 the mining operations had taken place? A. The mining operations involved generally in these photographs would have extended from 1967 to late 1968 or early 1969. 30

Q. So if those photographs were indeed taken in June, 1970 there was a period of 18 months or greater between the end of the mining operations and the photographs being taken; would that be right? 40

A. Yes, that would be correct.

Q. You see that there are a couple of notices visible in those photographs claiming that the land behind the notices is restored land? A. Yes.

Q. They are Associated Minerals notices are they?

A. They were Titanium and Zirconium Industries' notices, not put in by this company.

Q. When did Associated Minerals take over the lease? A. May, 1969 I think.

Q. Do you suggest by that the notices would have been put up before May, 1969? A. I would say so, yes, definitely.

Q. So that the restoration claimed was something over twelve months old at the very minimum?  
A. I beg your pardon.

Q. It had been claimed as restored land for more than twelve months when the photographs were taken in June, 1970? A. By the people who put the notices up. 10

Q. Do you regard the restoration which is visible in those photographs as being of a satisfactory standard, having regard to the period which had elapsed between the cessation of mining activity and June, 1970? A. No.

(Four photographs tendered and objected to).

HIS HONOUR: Subject to evidence as to the date of the photographs I propose to admit them. 20

MR. WILCOX: Q. (Photographs shown). You know the area fairly well, I take it. Would you agree with me that they show the condition of the country as it was in June or about June, 1970? (Objected to; allowed). A. Yes, I can answer that question. In the first place these photographs only cover a portion of the mined area as existing at that time. This company at that time had embarked on a programme of proper restoration on this area which is now shown on these photographs. 30

Q. With respect, I do not think that was the question. What I asked you was whether looking at those photographs you would agree that in relation to the portions of the lease areas they show they accurately depict the condition of those areas as it was in or about June, 1970? A. At that time, June, 1970; not at this time.

HIS HONOUR: Q. I think what you are telling us is since that time your company has taken other steps or additional steps to restore the land which has produced a different result, has it, today? A. That is correct. 40

(Four photographs of mining lease areas on Stradbroke Island admitted and marked Exhibit "G").

Q. Do you remember approximately the degree of

slope of the hill shown in the photograph which is in fact marked A? A. Before mining or after?

Q. Just there as it appears in the photograph?

A. I would say that slope is anywhere between 5 and 10 degrees.

MR. WILCOX: Q. Do you know what it was before mining? A. About that.

HIS HONOUR: Q. About the same? A. Yes.

MR. WILCOX: Q. In your capacity with the company did you receive any complaint from the Department of Mines in December last year about the restoration work that had taken place on Stradbroke Island at that time? A. I personally received no written complaint. 10

Q. Did you receive a verbal complaint from somebody in the Department? A. I received no verbal complaint.

Q. When you say you personally, you know of one being made to the company, do you? A. I know of inspections that were made, I know of recommendations that were made. They were not complaints. 20

Q. Was there some intimation of which you are aware to the company that unless a very considerable amount of restoration work was done the Minister would give consideration to forfeiting the company's bond? A. I was never made aware that the situation had ever arrived at that stage.

Q. You have not been told that within the company by anybody? A. No. 30

HIS HONOUR: Q. Whatever it was that was communicated to your company, that led to the further work that you referred to just a while ago? A. No. We had programmed this work otherways.

MR. WILCOX: Q. Without going into details of it, the communication to the company was on the subject of further restoration efforts? A. I believe that is possible. I did not handle that correspondence. There is another section of the company that handles such correspondence, but being generally responsible for operations I received no direct instructions from anyone to vary the existing programme that we were following. 40

Q. No instructions from anybody within your company to vary the programme; is that what you mean?  
A. To vary the programme that we had embarked on.

Q. You spoke of the high dune area on Stradbroke Island. Is there a hill called Yarraman Hill known to you? A. There is no place called Yarraman Hill that I know of on Stradbroke Island. There is a stream called Yarraman, a swamp or Yarraman Creek. The areas to the north and south are by common usage called Yarraman North areas and Yarraman South areas.

Q. And is one of them an elevated area of about 150 feet? A. Yes. 10

Q. And it is a ridge going up to that height, is it? A. There are a number of ridges of that elevation.

Q. When you refer to mining the high dune area, when you were with Titanium and Zirconium Industries was that area included in the then mining?

A. Yes. We were mining a ridge which lay immediately to the left of the Yarraman Swamp, Yarraman Creek area. 20

Q. And was there some restoration activity carried out on that ridge after mining? A. Yes.

Q. You were directly concerned with the work at that time, were you? A. Yes.

Q. And you used your best endeavours to have the restoration carried out in an efficient and effective way? A. The most exposed part of that ridge was rehabilitated by myself on methods that I laid down myself and it has always been recognised as one of the most effective pieces of rehabilitation on Stradbroke Island. 30

Q. In any event, you did your best to get the best possible vegetated cover on the high dune?

A. On that limited portion, prior to my leaving the company.

Q. Have you inspected that portion since you have been with Associated Minerals? A. About four weeks ago I walked over all of it.

Q. Are there slopes on that portion of 25 degrees and more? A. There could be slopes approaching 20. I do not know about 25; could be. 40

Q. Have you made any calculation of the proportion of living vegetated cover that has been found on slopes in that area of 20 degrees? A. Yes. I have no calculations; observation 100 percent at this moment.

Q. 100 percent cover? A. At this moment.

Q. After you left Titanium and Zirconium were there other high dune areas which were mined?

A. No - oh, in this company's leases or adjacent leases held by other companies?

Q. Within Titanium's leases? A. No.

Q. Was all of the high dune mining which took place by Titanium under your control? A. I controlled a part of the operations. I did not control the full operations.

10

Q. You controlled some and you were aware of others? A. Yes.

Q. Was a restoration programme carried out in respect of the other areas of Titanium outside your immediate control? A. In the high dunes?

Q. Yes? A. They were only minor in one place in the high dunes. They had only advanced a certain distance. I was involved in the restoration of that part that could be restored because of the position of the mining plant.

20

Q. Is the position then that such mining as Titanium had carried out in the high dunes at this stage was done under your control and restores under your control? A. Titanium and Zirconium Industries mined approximately 80 acres of ground. When I left the company they had mined approximately 15 to 20 acres. I cannot speak for the remainder of their mining. All I can speak of is that first 15 acres.

30

Q. That is in the high dunes? A. Yes.

Q. When you went back there after joining Associated Minerals did you have a look over that whole 80 acres? A. Yes.

Q. Did you regard the vegetated cover as satisfactory when you first saw it? A. No.

Q. That was in the first half of 1970 was it?  
A. That was in February, 1970. Already a programme of rehabilitation by haying and brushing was underway.

40

Q. Would you agree with me that the restoration over that 80 acres as a whole was extremely poor?

A. The restoration over parts of the area was not satisfactory. Other parts were excellent.

Q. Over the parts there were very large areas where there was a percentage of living cover of the order of 20 percent and less; would that be right? A. At that time.

Q. And indeed, on some of the higher slopes there was no living cover whatever, some of the steeper slopes? A. In very limited portions.

Q. You referred to a discussion with the council about a sewerage depot or a night soil depot. That did not proceed, that proposal so far as you are aware? A. No. 10

Q. You were actually resident at Munmorah during the whole of the period for which you were immediately responsible for the Wyong leases, that is June, 1967 to January, 1970, is that right? A. Yes.

Q. Had you taken over that job from somebody else who had been the resident manager for Associated Minerals for the Wyong District? A. No. I was appointed by Associated Minerals as the district mining manager. Prior to this the company was known as Wyong Minerals and its resident manager was a gentleman called Mr. Griffith. 20

Q. You really took over directly from Mr. Griffiths then did you? A. Yes.

Q. And Mr. Griffiths had been resident in the area, had he? A. Yes.

Q. Over a number of years? A. Yes.

Q. Whereabouts was he actually living? A. He lived in the same domicile that I lived in. 30

Q. In Munmorah? A. Yes.

Q. Would you agree with me that as the resident manager for Associated Minerals you were expected to make yourself aware of what was going on in the district in so far as it might affect the company's proposals? A. Yes.

Q. And to pass on to your head office anything that you considered to be of interest or important? A. Yes. 40

Q. And I suppose you did that job to the best of your ability? A. Yes.

Q. And Mr. Griffiths had been an able man who

had, as far as you could see as his successor, informed himself about what was going on in the area.

A. Yes. (Objected to; allowed.)

Q. There has been some description of the method of mining proposed to be adopted on these leases. We have been told that the land would be cleared by bulldozers, the timber stacked and burnt and the top soil separately stacked so it could be relaid after mining; that is right, isn't it? A. Yes.

10

Q. And then the dredge would be floated in a pool of water and it would pass the sand through the dredge plant and separate out the heavy concentrates and the sand which was to remain, is that right? A. Yes.

Q. You will recall giving some evidence previously in which I asked you about the depth to which the company proposed to mine, and you said that the company would mine to about the lake level within a few feet above or below lake level? A. Yes.

20

Q. So that depending on what the particular land height was at a particular point, you would be going down to that figure plus or minus a few feet, is that right? A. Yes.

Q. And where you had the highest point on this peninsula - it is about 140 feet, is it not?

A. Yes.

Q. So at that point you would expect an excavation of the order of 140 feet? A. Yes.

HIS HONOUR: Q. One thing I am a bit puzzled about is this floating that goes on. How do you float when you are on a hill like that? A. You either select a piece of ground which is of low elevation and you build banks around it, inject water into this enclosed area, float the plant and then proceed into the higher ground.

30

Q. You mean you dig away at the bottom of it?

A. It takes its pool with it. It digs from the front, it processes the material and throws it out the back so it is advancing forwards at all times.

40

Q. You see, you are down here and you are floating there. Do you dredge from the top or ---?

A. No. These are suction dredges. They are mined at the bottom of the hill, undermines the hill and it falls down. The material is then pumped up a tailings boom to similar heights behind the dredge, behind the plant.

Q. So the hill is ---? A. The hill is basically transferred.

MR. WILCOX: Q. Were you concerned in any way with any mining at Soldier's Beach, I think by Wyong Minerals? A. Never.

Q. Has that been done in your association with Associated Minerals? A. I would like a definition of the limits of Soldier's Beach before I answer that question.

10

Q. There is a place called Soldier's Point which is immediately east of ML.44, is there not?  
A. Yes.

Q. Did you have some complaint from the Soil Conservation Service within the last twelve months or so about the reinstatement of the frontal dunes on any section of either Tuggerah Beach or Soldier's Beach? A. None whatsoever.

Q. You know nothing about that? Was there ever any complaint from the Fisheries Department about frontal dunes being pushed below high water mark?  
A. No.

20

Q. You know nothing about that at all? A. No.

Q. You spoke this morning about the Munmorah area. I think one portion of the Munmorah area is known as Elizabeth Bay, is it not? A. Yes.

Q. (Approaches witness.) This is a copy of Exhibit 1. I show you that plan. Do you see an area that is identified as ML.40? A. Yes.

Q. A fairly substantial area. Was that mined by one of the Associated Mineral companies several years ago? A. Definition of several years, two or three, or six or seven?

30

Q. Was it mined by one of the ---? A. There are portions of that lease that I think were mined in 1965/66 and again within the last two years portions.

Q. Portion of it has been remined? A. No; other parts at different points of entry.

Q. The original mining was about six or seven years ago, is that right? A. I am guessing. I was not there then but I would say yes.

40

Q. Which company did that? A. Wyong Minerals, I presume.



Q. That is an area that Associated Minerals has now taken over responsibility for with a group?

A. Yes.

Q. And indeed, has a sign stating that it has been restored by Associated Minerals, is that right?

A. Yes.

Q. In that area, would you agree that there is a shortage of trees as distinct from grass cover?

A. What is a definition of a tree?

10

HIS HONOUR: What do you mean by shortage.

MR. WILCOX: Q. You have got vegetated cover but there are not many trees growing on the area such as angophoras; do you agree with that? A. There are a large number of trees in the area.

Q. (Approaches witness.) So you know the area I am talking about, I show you a slide which shows a notice which you might like to read, and I think you will agree that that is an Associated Minerals' notice claiming in effect that it has been regenerated? A. Yes.

20

Q. Now I want to show you this picture which I suggest to you is the area immediately behind the notice. Do you see that? I think you can see the notice in the photograph? A. Yes.

Q. That area was mined around five or six years ago? A. Yes.

Q. You will see there a few very small trees. Will you agree with me that there is very little regeneration of substantial trees? A. If I put the photograph in a different position I would find adequate trees. In that photograph there are few trees.

30

Q. No doubt there were many photographs taken. In that photograph there are a few trees? A. Within a short distance of that there are dozens of angophoras growing naturally in the area. That photograph has not taken them.

Q. Would you look at that third photograph, and can you identify that? I suggest to you it is in the same area as the photographs you have just seen. A. No, I cannot identify that area. I would like to know the age of the photograph and where it was taken, etc., but I cannot identify it.

40

Q. I suggest it has been taken very recently, in

the last few weeks, but if you cannot identify the area say so? A. I am not going to positively identify the area. I would say that it is possible that that area was undergoing restorative processes at that time; that is possible.

Q. Would you agree that it is part of the leasehold area at Munmorah of your company? A. It could be.

Q. You do not know for certain? A. I would not be certain. 10

(Luncheon adjournment.)

ON RESUMPTION AT 2 P.M.:

(Two slides tendered, objected to, admitted excluding any writing on them and marked Exhibit "H".)

MR. WILCOX: Q. Are you able to tell the court in round terms the cost per acre of restoration of undulating country behind beaches throughout the whole programme? A. \$500 to \$800 an acre is somewhere the range. 20

RE-EXAMINATION:

MR. MILNE: Q. How many acres are in the company's leases on Stradbroke Island? A. I think about 9,000.

Q. You told my learned friend that you could identify these four photographs in Exhibit "E". (Approached witness; Exhibit "G" shown.) How many acres would be shown in that photograph? A. Visually, I would say five, maybe ten. 30

HIS HONOUR: Photograph "C", five to ten acres, is that it?

MR. MILNE: Q. In the 9,000 acres whereabouts is that five to ten acres? A. At the northern end or the northern portion of the leaseholdings, specifically in what they term as the Yarraman area.

Q. What about the one with the Holden motor car in it? A. From what you can see there, I would say you are looking at about 15, 10 acres, including way up in the background here, but materially in detail which is the majority of the photograph. 40

Q. Tell me whereabouts in the 9,000 acres that

is? A. In the same general area as this one, the Yarraman area.

Q. Would you tell his Honour what it is about that photograph that enables you to tell that is on Stradbroke Island rather than on Fiji or somewhere?

A. Because I know the area and I have seen that.

Q. What about D? Could you tell his Honour what enables you to distinguish that between Stradbroke Island and California? A. Because I have seen it.

10

Q. What about the last one, A? A. Similarly I have seen it.

Q. Are those four typical of the 9,000 acres?

A. No.

Q. Have you recently seen the ground in any one of those four photographs? A. Yes.

Q. How long ago? A. The last week in January of this year.

Q. (Approaches witness.) Will you look at the photograph I am now showing you. Do you recognise that? A. Yes.

20

Q. Where was that photograph taken? A. In the same area.

Q. When you say the same area, you mean the same area as --? A. The same general area of which those other photos show portions, this similarly being a portion of that general mined area in the Yarraman zone.

Q. Can you tell us when it was from your recollection that the land in that area looked like it is shown in the photograph that I show you?

30

A. I could not quite get the question.

Q. You say it is in the same general area as the last four photographs? A. It is in the same general area but not the same exact portion.

Q. Can you tell us when it was that the same general area looked like it is as depicted in that photograph? A. This particular portion would have looked like those photographs, I would say sometime in 1967/68.

40

HIS HONOUR: Q. I think what you meant by that answer - tell me if I am right - in 1967 and 1968 the land in that photograph would have looked

something like the land in the Exhibit "G" photographs? A. Yes.

MR. MILNE: Q. I want to know when it looked like the photograph which is now in your hand? A. From 1969 onwards. I saw this area in 1970 and it was well developed to that stage, in early 1970.

Q. What did it look like a few days ago when you were there? A. Like that only better, more vegetation.

10

(Photograph of part of Stradbroke Island leases tendered without objection and marked Exhibit 29.)

Q. (Approached witness.) Would you look at this photograph which I show you. Are you able to tell me whether the tree in Exhibit 29 is the same as the tree shown in the next photograph that I show you or are they different trees? A. I am fairly certain that is the same tree.

Q. Do you know the two gentlemen that are in it or not? A. Yes.

20

Q. Who are they? A. One is a gentleman called Mr. Paul Broise van Gronau.

Q. Who is the other one? A. A Mr. John --- (pause).

Q. If you cannot tell us his name say so? A. I cannot remember it.

Q. Are they employees of your company? A. Yes.

MR. MILNE: No further questions.

HIS HONOUR: Q. Mr. Wells, I understand that the southern dredge - that is dredge 10, is it? A. Yes.

30

Q. Has been carrying out dredging work on part of ML.42. Has it carried out any dredging work on any part of ML.48? A. Yes.

Q. Has it carried out any dredging work on any part of ML.51? A. No.

Q. Do you know if there is a plan showing what area so far as been covered or dredged by dredge number 10? A. Yes, there is such a plan.

Q. I think from my recollection of the aerial photographs there has been some rehabilitation or

40

A.A. Wells, re-x

restoration work carried out in respect of some parts at least of the areas mined by dredge number 10?

A. The majority of it has been.

(Witness retired and excused.)

JOHN BRUCE McKELLAR

Recalled on former oath:

MR. MILNE: Q. (Exhibit 6 shown.) Is this the position, that in sometime in 1970 the dredge was going northerly up the coast? A. Yes.

10

Q. What was the then proposal? A. The then proposal was to continue on that path along the frontal dune area to a point approximately where the ML.48/ML.51 boundary was intersected. At that point the dredge was to turn west and then south, approximately the same thing that actually happened and proceed southwards parallel to and adjoining its track or dredge path up the coast.

Q. So in other words it was to go to the boundary between 49 and 51 and then turn south again ---

20

HIS HONOUR: Turn west.

MR. MILNE: Q. Turn west and then south? A. Yes.

Q. And then work back north again? A. Yes. On arriving back at a position approximately where "42" is written in ML.42, it would then turn once again and go parallel up there.

Q. Up to the same boundary? A. Parallel up to the same boundary and then sent to ML.51. This plan would mean that quite a large area adjacent to the road in ML.48 and a sizeable area adjacent to the road in 42 would not have been - there was no intention to mine it. You may recall that part of that would not be mined was included in what is referred to as the red-hatched area on the various other plans.

30

Q. What was it that caused you to turn to the west and south around November, 1971? A. In accordance with the lease conditions we were allowed to clear only so far ahead of the operation. It is sometimes in terms of change, it is sometimes in terms of an acreage, but it is not very far, but had we proceed beyond the point shown in blue there in November 1971, or actually the end of October was the point where the turn was made, we would have had to clear some more land and thereby infringe

40

A.A. Wells, re-x, ret'd

182. J.B. McKellar, further re-x

the tree preservation order that was placed on the area, so we turned back into what was a cleared area and an area which had our pipe lines, roadways and one thing and another on it.

HIS HONOUR: Q. Assuming that you had proceeded as planned, when would you have firstly got to the ML.51 boundary? This is only an estimate of course?

A. I would say approximately four months, from October to February/March, somewhere about that. 10

Q. You would be getting very close to it now?

A. Yes.

Q. You may not be able to give this estimate, but the plan was to turn south again to approximately where the figures "42" are and then turn north again? A. Yes.

Q. When would you have got to the ML.51 boundary, that is gone right down south and gone up north again? A. I would think something like another fourteen months it would have taken. 20

Q. At the moment you are still coming south?

A. Yes.

Q. And you have got a point out further than what is shown there? A. Yes. We are still in ML.48 but ---

Q. Approaching the ML.42 boundary are you?

A. Yes.

Q. Supposing you go down to approximately where the figures "42" are and then turn north again, how long would it be from now if you followed that course before you got to the ML.51 country? A. I am sorry, that is the 14 months I estimated. 30

Q. The question I asked you earlier was, supposing you had adhered to the original proposal, not turned south in November but kept going to the boundary and then turned down again, came right south and went right back again, how long would all that take? A. That would be twenty months.

MR. MILNE: Q. The second limb of his Honour's question was, are there dredge path plans in existence now for 42, 48 and 51? A. The original dredge path plans are existent but we are now operating on a six month plan which was a plan we had presented to the Court as being our next six months operations in December and which will take us through to June. 40

J.B. McKellar, re-x

Q. Where are the original dredge path plans?  
A. In Southport and in Wyong.

Q. The six monthly one is the one that went down to approximately ML.42? A. Yes, it went well down there.

Q. Where is that plan? A. That also would be in Southport and Wyong.

HIS HONOUR: Q. That second plan, the six months plan, was no doubt a plan which you had to draw up or formulate because of the interlocutory proceedings of the tree preservation order? A. Yes. 10

MR. MILNE: Q. How long would it take you to get the original one, the one from Southport down here - overnight? A. Overnight, yes.

HIS HONOUR: Q. They could be here by Monday?  
A. Certainly.

(Witness retired.)

(Case for the defendants close.)

CASE IN REPLY

20

STEPHEN CLARK

Sworn, examined as under:

MR. WILCOX: Q. Your name is Stephen Clark? A. Yes.

Q. You live in flat 5, 20 Rickard Avenue, Mosman? A. That is right.

Q. I think you presently hold the position of assistant curator at the Australian Museum in College Street, Sydney? A. That is right.

Q. You are a Bachelor of Arts of the University of Harvard. What year did you graduate with that degree? A. 1965. 30

Q. I think you specialised in geology in your undergraduate course? A. That is right.

Q. Having completed that degree, did you then go to Michigan University where you attained a degree as Master of Science, specialising in resource ecology? A. That is right.

Q. I think you came to Australia just two years

J.B. McKellar, re-x,  
ret'd.

ago and you have held your present position since that time? A. Yes.

Q. Apart from your duties at the Museum, are you working for a doctorate studying the regeneration of vegetation after disturbances such as from sand mining? A. That is right.

Q. And have you over the last twelve months or more carried out extensive inspections of sand mined areas on particularly the coast of New South Wales? A. Yes.

10

Q. What was the purpose of the inspections that you carried out? A. The purpose was to determine as carefully as possible what the ecological effects of sand mining were with regard to plant communities, vegetation.

Q. I wonder if you would mind describing for us what you mean by plant communities and perhaps the relationship between different species? A. Historically a plant community has been a term that is used with regard to an assemblage of plants growing in a particular area. This is usually under a fairly uniform set of environmental conditions.

20

Q. In respect of this study have you, so far as you are aware, visited all of the coastal spots in New South Wales which have been sand mined?

A. Before I began the study I visited most of the mining operations on the New South Wales Coast. This would have been two years ago.

Q. Does this include the Munmorah area? A. Yes.

30

Q. Also areas around Port Stephens? A. Yes.

Q. And also areas further north? A. That is right.

Q. Have you taken any steps to ascertain the plant communities to be found in coastal areas such as those that contain the heavy minerals and to try and ascertain what proportion of the plant species survive after sand mining? A. I would say that there are approximately five major types of plant communities on the New South Wales coast, and these would be the Angophora Forest, the Banksia Heath areas, ti-tree or Melaleuca Swamp, the so called literal or coastal rain forest and the sort of general coastal scrub or the vegetation that grows right on the coast. In the course of my study I have located areas in three of these vegetation types, the Angophora forest, the heath area and

40



the coastal scrub. I have surveyed these areas for botanical composition.

Q. I wonder if you would tell us whereabouts these sample areas are that you had selected? A. I have areas at Salamander Bay on the South side of Port Stephens at Hawk's Nest, north of Port Stephens at Forster, at Bonny Hills just south of Port Macquarie and at Kingscliff which is south of the Queensland border.

10

Q. In these study areas you have a specific area of land that you examine, is that the idea?  
A. That is right.

Q. What sort of land area is encompassed within the study area? A. My study areas are two chains by two chains, the reason for them being this size is to confine them to a single type of vegetation.

Q. Are these study areas areas that have been mined or not been mined? A. After I had done the preliminary botanical survey the areas were either mined by mining companies or the companies have co-operated in providing a simulated mine which entails clearing the vegetation, clearing the top soil, leaving it stock piled for a specified period of time ---

20

Q. Comparable to the time it is kept when it is mined? A. That is right. The times are two months and five months, and then the top soil is replaced on the area and I revisit these areas to determine what plant species have returned.

30

Q. Prior to the disturbance of the soil you make some inventory of the plants that are to be found, do you? A. That is right. I determine what plant species are present and also the relevant amounts of the plant species.

Q. In the time that you have been carrying out this study have you been able to form any opinion as to the proportion of plant species which survive this operation? A. I should first say that my study areas are in three of the five types of vegetation that I have mentioned. I have not located areas in literal rain forests or Melaleuca Swamp because these areas are very difficult to find. They are also the most difficult areas to restore. The areas that I found are in the Angophora forest, banksia heath and coastal scrub.

40

Q. What conclusions have you been able to reach so far on that? A. I have areas I have been

recovering from the mining process for a year now and I found up to 30 per cent. of the specie that were in the area previously.

Q. That is of species rather than number of individual plants? A. That is right.

Q. Are you able to tell us the types of species which regenerate better than others, if there be such types? A. The legumes, as you would expect, are more abundant than they were on the areas prior to mining. 10

Q. What sort of particular plants? Can you give us an example of legumes? A. The wattles, the pea plants, those would be the two major types.

Q. They are fairly small plants of course? A. Yes. The largest would be the wattles which would get up to probably ten feet.

Q. You say they are more abundant prior to mining? A. That is right.

Q. Do you have any opinion as to the reason for that? A. Well, the most logical explanation for this is because of their nitrogen fixing ability. These plants are not dependent upon soil nitrogen. They can synthetize their own. 20

Q. They can adjust to the change in the nitrogen in the soil? A. That is right, and this indicates there is probably a depletion of nitrogen in the top soil associated with mining.

Q. What other species have you noticed are strongly represented in the 30 per cent.? A. These would be the two major groups. 30

Q. What about self-regeneration of Angophoras? Can you tell us what you have noticed about that? A. I think that as a generalisation of the species, that as a group that do not tend to regenerate on mined areas the dominant ones are the tree species, the larger species in the area.

Q. And they tend not to regenerate? A. That is right, and one possible reason for this might be that these plants are cleared prior to mining and burned, whereas the smaller under-storey shrubs are cleared with the top soil and replaced after mining. 40

Q. Have you inspected The Entrance North peninsula? A. Yes.

HIS HONOUR: Before you go over this ---

Q. You have told us your observation in the period you have been investigating the matter about the percentage of species that are recovered?

A. Yes.

Q. Have you made any observations at all or been able to make any observations at all about the extent in area of the recovery? Is the recovery in respect of the species that do recover general over the area or is it patchy or what? A. Well, it is fairly uniform over my study areas. I have broken my study areas up into smaller sub-areas on which I have planted different cover crops and different levels of fertilizer and there are differences in response to different amounts of fertilizer or different cover crops. I would expect that restoration on a larger area would be less uniform than on my study areas simply because of size.

10

MR. WILCOX: Q. Just before I go to this particular area, in your travels up and down the coast looking at sand mined areas, have you had the experience of seeing areas immediately before mining and then seeing the contours as they were after the mining operation has been completed? A. Yes, I have revisited areas that I was taken to two years ago when I began the study. I have not done detailed topographical surveys of these areas, but generally speaking the topography is much more uniform; the general level of the land has been lowered due to the effect of mining.

20

30

Q. You mean the land form itself is more uniform? A. That is right.

Q. You do not get the sharp rises in hills that you might have otherwise had? A. The areas before mining are more heterogeneous areas. You have lots of dunes and swells and the complexity of the vegetation pattern is related to this topography. Generally, I think, in the interest of stabilisation companies are contouring after mining to a low uniform profile which prevents the return of the diversity of vegetation.

40

Q. What about the diversity of vegetation on the areas that have been mined and revegetated? Is there the same degree of diversity as there is in nearby unmined areas? A. No.

Q. I take it The Entrance North peninsula - you recognised in your visit there the area, if I may

S. Clark, x

show you a copy of Exhibit 1, the lower of the two areas edged in red? A. Yes.

Q. Have you walked through that area? A. I have walked through the area west of the red in this area.

Q. Have you walked through a broad area west of the road or just one particular place? A. I pay particular attention to the rain forest which is southern of this area.

10

Q. Would you mind pointing out to us the number on the lease of whereabouts you recall the rain forest was that you visited? A. I believe the rain forest begins at approximately the northern boundary of ML.42, principally west of the road although it does occur east of the road.

Q. What can you tell us about the rain forest, Mr. Clark, is it an attractive area? A. Well, the rain forest north of this peninsula has been badly disturbed, I think probably principally due to clearing and it also showed some effects of burning, but I think it is in better condition, that is generally spaces, particularly when you get off the road to the west.

20

Q. Is it better on the western side than the eastern side? A. Yes.

Q. How unusual a feature in your studies of the New South Wales coast is this rain forest area?

A. This is an example of the rain forest I mentioned earlier and I know of only five or six other areas of rain forest that remain on the New South Wales coast.

30

Q. Are there any closer to Sydney than at The Entrance? A. This would be the southern most one, to my knowledge.

Q. Where would you have to go to find the next one? A. One in the Myall Lakes area, Seal Rocks.

Q. Seal Rocks is near the northern end of the Myall Lakes complex, is it not? A. Yes.

Q. And the others are north of that again, are they? A. Yes.

40

Q. What is the particular feature of this rain forest that give it its distinctive nature, this particular one here? A. I think the fact it is the southern most one, to my knowledge, is something of

significance because these are tropical species that have apparently worked their way down the Australian coast and with increasing latitude they become less and less abundant and this would be unusual in that respect.

Q. It is an attractive area? (Objected to.)

A. Rain forests tend to be - I think things botanists find very interesting, whether the general public is going to be interested, these areas are very interesting botanically, whether they are very interesting to the public at large, I do not know.

10

Q. You regard it as interesting to yourself?

A. Yes.

Q. From what you have seen of the change in land fall and in vegetation following this sand mining have you any opinion as to the chances of the rain forest being re-established if it were mined?

A. The rain forest in this area, and in most other areas I have observed, I think it is very dependent upon a steep frontal dune which shields it from wind and salt spray and in the process of mining this frontal dune is usually recontoured to a much lower and less sheltering profile which prevents the return of rain forest species.

20

Q. When you speak of the frontal dune is that on the ocean side or does it also include the Lakes?

A. Principally, I think, on the ocean side.

Q. Is there any other problem about re-establishing a rain forest after sand mining? A. The other problem of course, is that accompanying this variation of vegetation pattern you also have variations in soil and in the process of mining you take all this top soil and put it to one side and mix it together, so the topsoil is mixed in with Angophoras soil, so when you spread this soil back over the area you have no way of knowing whether you are replacing rain forest top soil or some other type of top soil.

30

Q. Is it important in the natural regrowth of plants that the soil be of a particular structure?

A. The plant communities I mentioned are very dynamic things and they develop in the top soil and they depend on the top soil, inter-active soil. The seeds that would be necessary to replace a rain forest are also present in the top soil.

40

Q. If you mix up the soil do you disturb or interfere with the chemical balances within the soil? A. The soil is a chemical thing and a physical thing. In the process of clearing you are taking

50

approximately the first 12 inches of the soil which is not uniform, or a concentration of organic material and nutrients would be in the top two or three inches and you take this off the top and you replace so it is uniform with the twelve inches, so you have disturbed the chemical nutrients and the seeds throughout the 12 inches in the top layer.

Q. Is this intrinsic in plant regeneration?

A. Seeds of many plants will not regenerate unless they are near the top of the soil. 10

HIS HONOUR: Q. When were you there? A. In this area, two weeks ago.

Q. Was that dune still there? A. Yes.

MR. WILCOX: Q. So far as the Angophora area is concerned, have you been to that on the North Entrance? A. Yes, after I visited the rain forest I went up a road to what was, I think, approximately the northern boundary of ML.44 and walked through the Angophora forest to the Melaleuca Swamp around the Lake. 20

Q. How would you describe the Angophora forest?

Q. It is a very different type of vegetation than the rain forest. The species are quite different historically, they evolved in Australia rather than coming from Malaya, those are more open forests, the trees are more widely spaced, you get a greater development of shrub species. In the rain forest you have a closed canopy and it is very difficult for things to grow on the ground surface. 30

Q. Have you any opinion as to the possibility of obtaining a regeneration of that Angophora forest if the area were mined? A. Well, it is in fact an Angophora study area I referred to when I said approximately 30% of the species are returned after one year.

Q. Have you any Angophoras among that 30%?

A. No.

HIS HONOUR: Q. What does this suggest to you?

A. It suggests to me some part of the mining process has inhibited the return of Angophoras. 40

MR. WILCOX: Q. Can you say a reason why? A. The trees are cleared and burnt and with them the seed supply. The seeds of these trees only remain viable in the top soil for a period of time. If the top soil is not back in that period of time there won't be any viable seeds in it.

HIS HONOUR: Q. Are Angophoras deep rooted?

A. There seems to be some variation of opinion in this. Professor Roger Carroll of the Sydney University believes these trees are able to strike down through as much as 100 feet in order to reach water and I believe that root systems have been found as low as 10 to 15 feet below the surface.

Q. Do you know what they do about that, when they are clearing the area, they just clear them off ground level, do they? A. Well, if in fact this is what does occur, I think it is still valid to say much of the roots are concentrated on the top, a foot to two feet, and the larger ones are pulled up with the tree when it is bulldozed for the road. The small remain in the top soil. 10

MR. WILCOX: Q. The type of Angophoras to be found at the North Entrance, is that a fast growing tree. Can you give us some idea how long it would take to reach a particular height? A. It is difficult to age trees in Australia because of the irregular seasons but I would estimate that the trees in that area, those large Angophoras, probably would be up to 80 feet or 90 feet, and would be at least 100 years old, probably more like 200 years. 20

Q. To get any large Angophoras back would take quite a long while, is that so? A. Yes.

HIS HONOUR: Q. How tall would you expect an Angophora to be after ten years. If you do not have any idea, say so? A. Growing on sand? 30

Q. Yes. A. I would be surprised to see one more than ten feet tall.

MR. WILCOX: Q. You refer to the Melaleuca Swamp, whereabouts is the Melaleuca Swamp? A. The major area borders Tuggerah and is in the northern part of ML.44.

Q. And on the western side of the road?

A. Yes, it may extend down to ML.51.

Q. What effect has this sand mining on Melaleuca Swamp? A. Again, we are dealing with a plant community, that is very dependent upon topography. In this case you have the topographical surface which is beneath the water table so you have standing water in those areas for at least part of the year. If after mining the land surface is recontoured to a higher level, as usually happens, then the Melaleuca Swamp will not regenerate in these areas. 40

Q. Because of the disturbance of the water table? A. That is right, because the level of the ground has been raised relative to the water table.

Q. Do you regard the North Entrance area having any scientific or educational value? A. I think that it could be pointed out that this type of vegetation does occur elsewhere on the New South Wales coast but to my knowledge it does not occur in areas of this size which are not threatened by this mining. 10

Q. You are referring to the Myall Lakes?

A. Yes, and there is also an area further north at Redhead which starts this type of vegetation. If it were the last area of Angophora forest it would be very, very scientific. In fact, there are no areas at present threatened by mining. If other areas like Myall Lakes suffer from mining for scientific purposes the chief value then lies in its recreational potential.

Q. And particularly with reference to its proximity to Sydney? A. Yes, and Newcastle area. 20

Q. If the area was mined and replanted would it have any scientific value to a botanist? A. Apart from someone like myself who has studied this sand mining, I very much doubt.

Q. It would not be much value instructing people in inter-relation of plant life? A. You have disturbed the relationship of this plant and its environment.

Q. Assume if you will that some mining is to take place on the peninsula, do you have a view as to whether or not it would be desirable to precede the mining with a carefully detailed survey of the vegetation and the topographical features of the area so as to determine what areas should be preserved and what areas could be mined, and if so, under what sort of controlled conditions? A. I think this would be very desirable. If you are going to make an effort of restoring vegetation that is there at present a very detailed knowledge has to be available of what is there and a careful vegetation survey would also help you to find out what areas of vegetation are most valuable and most valuable of preservation and maybe, for some other reason, mining might be a valid land use. 30 40

Q. If you require the land to be restored what regenerative action might be taken in those areas?

A. The survey should be not only vegetation but also environment and this would include a detailed



topographic map, or soil analysis would be desirable to determine chemical differences in the soil, and so on.

HIS HONOUR: Q. In relation to this protective dune you referred to is it of any importance in relation to the Angophora forest? A. Generally speaking the Angophora forest is more tolerant to wind exposure and salt spray. In fact, you have Angophora forest throughout this sort of central area of high dune country to the west of the road. The exact, precise, elevation of that high dune is less critical with regard to Angophora forest other than with regard to the rain forest at Melaleuca. 10

Q. Dealing with the protective dune in respect of the rain forest which you say still exists, is that on the west or eastern side of the road?

A. The main, from what I was able to observe, the main protective dune is on the eastern side of the road. 20

Q. Protected? A. Yes, while the rest of the rain forest is west.

CROSS-EXAMINATION:

MR. MILNE: Q. Would I be correct in assuming that you would be an active member of a number of learned societies and other associations? A. I am a member of the British Ecological Society.

Q. Any other society? A. That is the only one at present.

Q. No other society at all. Are you a member of any Association which is concerned in any way with conservation? A. No. 30

Q. None at all. Were you concerned in any way either in a professional capacity or any other capacity with the move to preserve what has been called the Myall Lakes area? A. Was I associated -

Q. In any way at all? A. Not in the conservation movement.

Q. Were you associated in any way? A. I was asked as plant ecologist to the Australian Museum to prepare a survey for the State Planning Authority. I was also asked to prepare a survey for the mineral deposits. 40

Q. By? A. By the Mineral Deposits Company.

Q. Did you do either of those? A. Both.

Q. Were you involved in any way with the Colong Caves controversy? A. No.

Q. Not at all. Or with the Clutha Developments controversy? A. No.

Q. Or with any other publicised conservationist issue? A. No.

Q. Were you asked to give evidence in this case by the Museum or somebody else? A. In this case I was asked by the local Council. 10

Q. How long ago were you asked? A. I do not know the exact date it would have been.

Q. Weeks, days or months? A. A month to six weeks.

Q. It would not be unfair to say of you, would it, that you would be pro-conservation and anti-mining? A. I would like to think that the evidence I ---

Q. Just answer that, you are pro-conservation and anti-mining? A. I think that is unfair. 20

Q. You think it is unfair, do you? A. Yes.

Q. Would you agree with me you would be pro-conservationist? A. That is a difficult question to answer. To the extent that any member of the scientific community is pro-conservation.

HIS HONOUR: Q. Do you mean by that it depends on the circumstances, or what? A. I think any one who studies this type of situation inevitably forms an opinion, but this does not interfere with an objective analysis of the information. 30

Q. Whether it does or not, what Mr. Milne is asking you is if you had any particular area - to take an example, where you had the choice of advising or deciding whether it should be mined or conserved would you support from the proposition it should be preserved, prima facie, or some other --- A. My position would be that each case should be examined individually and some mining can take place on the New South Wales coast and should take place. Other areas should not be mined. 40

MR. MILNE: Q. In other words, what you are saying is you would want to be completely fair and

dispassionate about the whole thing? A. As much as I am able.

Q. May I take it then, that was the yardstick with which you examined this particular matter and came along to give evidence? A. That is right.

Q. You examined it dispassionately, having weighed up both sides, that is correct, is it?  
A. Yes.

Q. That would mean, would it, that you looked at it and weighed the scales from the mining company point of view and from the Council's point of view? 10  
A. I have been interested ---

Q. Please. A. The problem I am studying does not have anything to do with the mining company or Council, it is the effect on the vegetation.

Q. Am I to understand you did not look at this case at all from the mining company's point of view? A. My - (Question withdrawn.)

MR. MILNE: Q. Did you give any consideration at all to what the mining company had spent on this land? A. No. 20

Q. Did you give any consideration at all to whether or not the mining company had or had not consented - had consent to mine? A. No.

Q. Did you give any consideration at all to whether or not the mining company had been paying rent and rates on this land over the past few years?  
A. No.

HIS HONOUR: May I ask, in relation to what questions and what answers are you asking that? 30

MR. MILNE: I am trying to find out what sort of balanced view he gave.

HIS HONOUR: But in relation to what type of question, because most of the evidence he gave was as a result of his tests.

MR. MILNE: I submit I am entitled to put to him that the tests he did were tests which may have been swayed not by his scientific knowledge, but by some other thing. 40

HIS HONOUR: If you ask the witness how many Angophora trees there are to the acre now, it has nothing to do with the interests of anybody. A lot of his evidence is of that character.

MR. MILNE: One often finds an expert who is biased one way or the other, and will give biased evidence. When one goes to attack that, the first thing one does is to establish the fact that he is interested in one side only.

HIS HONOUR: I thought that was the matter to which the first questions were directed. But it is the current questions which were designed in this way: "When you gave the evidence, did you take into account how much rates the company had paid, or that they had paid rates?" I am merely asking you in relation to what questions do you ask that question? The witness said, for example, he found that in the tests he did over the last couple of years, thirty per cent. of species recovered after a year. Could you illustrate in relation to that, dispassion about rates? 10

MR. MILNE: If I could show that was a piece of fabricated evidence because he was obsessed with finding against the interests of the mining company, then that would be admissible. 20

HIS HONOUR: That is not the matter to which I was raising questions. What you asked him was "Did you take into account a number of matters in giving your evidence?" I merely ask you what particular evidence you were referring to, because I cannot see how the rate question has anything to do with the number of species that survived.

MR. MILNE: I am going to cross-examine him about his view that these plants - some of them should be preserved for scientific purposes, or whatever he said. 30

HIS HONOUR: You say they go inter alia to his answer that if all the other areas were destroyed they would be of scientific interest?

MR. MILNE: Yes.

HIS HONOUR: And if they were not destroyed, they would be valuable ---

MR. MILNE: Q. It would be important, before you came to the view that it would be desirable or necessary to preserve this area, to put the matter on the scales and weigh it up, wouldn't it? A. Yes. 40

Q. And you did come to the view that it would be desirable for scientific or educational or other reasons, to preserve both the rain forest, the Angophora forest and the Melaleuca Swamp? You did

come to that view, didn't you? A. That is my personal opinion.

Q. And you came to that view, you have told us, after carefully considering and weighing up the competing sides? A. No.

Q. Did you only look at one side of it?

A. What I have done is, I have done a study - I am doing a study to determine what the effect of mining is on vegetation. That is the extent of my scientific information. I can look at that information and determine whether I feel that a recreational or a scientific value is diminished by the effect on the vegetation. If it is diminished, then I come to the conclusion that perhaps it should not be mined.

10

Q. But all I want from you is this, that you would not come to a view that these things should be preserved, for example, for a scientific purpose, unless you weighed the scales on both sides? A. I freely admit that my scientific information ---

20

Q. You would not do it, would you? Go ahead.

A. My scientific information is to be available to a group like this. For a group like this, or a planning group to decide whether mining should take place, taking into account other areas and other types of vegetation ---

Q. The fact is that you did not examine the thing and weigh the scales on both sides, did you?

HIS HONOUR: I must say, in relation to what?

30

MR. MILNE: Q. In relation to the value to the mining company, and the importance to the mining company, and the importance to the scientific interests? A. No.

Q. So to that extent your view is a one-sided view? (Objected to.)

MR. WILCOX: This witness has been scrupulous to speak about what he has observed, what tests he has done, and his opinion.

HIS HONOUR: I think what happened is this - my recollection of his evidence is that he gave a lot of evidence as to facts and tests which have nothing to do with weighing any scales anywhere. You also asked him whether the area would be of scientific value, and he said yes, it would be in certain events. You then asked him for what would it be

40

valuable if those events did not occur, and he said yes, it would be valuable for recreational purposes. There was nothing in his evidence in chief that I recollect that related to that matter at all. But nevertheless Mr. Milne has got him to say that in fact it is his personal view that it should be preserved. If he is cross-examining him not about the evidence in chief but about that view, then I think the evidence is admissible, because he has expressed that personal view in cross-examination. And I allow the question. 10

MR. MILNE: Q. So to that extent your view is a one-sided view?

HIS HONOUR: I then interpolated "What view?"

MR. MILNE: Q. The view that it should be preserved for scientific or educational purposes? A. Yes.

Q. When you say yes, you mean ---? A. I am admitting it is a one-sided view.

Q. You would agree, wouldn't you, that as an ecologist - I withdraw that. You are an ecologist, aren't you? A. That is right. 20

Q. As an ecologist it would be important, very important, for you to weigh up before you expressed a view, both sides of an argument? A. Yes.

Q. It would be, wouldn't it? Please do not nod. You will have to say yes. A. I am sorry - yes.

Q. So before you come to a conclusion and expressed the opinion that a rain forest or an Angophora forest or a Melaleuca Swamp should be preserved for some scientific purpose, it would be of the greatest importance to evaluate what it is worth as a scientific study, and what it is worth for some other commercial purpose? A. That is not an ecological problem. 30

HIS HONOUR: Q. Assuming that you had to decide it, you are being asked? A. Yes.

MR. MILNE: Q. You did not make any inquiries as to what it was worth for mining purposes? A. With regard to my study? 40

HIS HONOUR: Q. I think Mr. Milne is referring to the area on the North Entrance peninsula? A. I see. No.

MR. MILNE: Q. Would it be possible that if you

were to give the matter further consideration, and were given the facts and the figures on the other side of the ledger, that you might change your mind about it? ---

HIS HONOUR: Q. The "if" being the answer to your question about his personal view on it. A. Yes, that is possible.

MR. MILNE: Q. So, as a matter of fairness you would have to concede that that part of your evidence about scientific or educational values is subject to the qualification that you would want to look at the other side of the ledger? A. Yes. 10

HIS HONOUR: We do not want to slip from one to the other. Without reference to any balance at all of interests, it may be in certain events of scientific value. And also that it would be of value for recreational purposes. That was the evidence in chief. That leaves out any question of balance. Your question is still related to the expression of personal opinion? 20

MR. MILNE: Q. Yes. Let us deal with the opinion that you formed that it should be preserved for - and correct me if I am wrong - you said scientific, educational and recreation, did you? A. I said that if that were to be the only area to remain unmined, then it would have scientific value.

Q. Did you say educational value? A. No, I don't think I said anything about educational.

Q. That may be my mistake. Did you say recreational? A. Yes. 30

Q. So it is scientific and recreational ---

HIS HONOUR: We keep on slipping from one to the other. You refer to scientific value and recreational value in his first answers, but in relation to the personal view about the matter that you asked him, he simply said "I think it should be preserved".

MR. MILNE: Q. Did you say that in your opinion you thought it should be preserved for scientific - because it had scientific value? A. No, I don't think I said that. 40

Q. Then I will ask you now. Do you think that it should be preserved because it has scientific value? A. Again, you cannot decide on the basis of this area in isolation. It depends on what happens elsewhere on the coast.

Q. You have told us you examined a lot of them, if not all. Do you think that this area, being the rain forest, the Angophora forest and the Melaleuca, should be preserved because it has scientific value? A. There are more exceptional examples of vegetation types present there. If these were the only ones left, they would be certainly of scientific value.

Q. I am sorry to be persistent with you, but you have studied them and you know what is left, don't you? A. Not exhaustively. 10

Q. You know some of them? A. Yes.

Q. In your knowledge do you now hold the opinion that those three areas, the rain forest, the Angophora and the Melaleuca, should now be preserved because of their scientific value? A. Given what assumed status for other areas? If you tell me whether or not there are other areas that are going to be preserved, then I can answer that question. 20

Q. Having regard to the other areas that you know of? A. I would say that if there were no mining in the Myall Lakes area, then this area would be of less importance scientifically.

Q. What about recreationally? Do you hold the view that it should be preserved for recreational purposes? A. That is my personal opinion.

Q. So there are two things, scientific and recreational. Nothing else? A. Well, I think you have brought up educational as well, although that was not touched on earlier. 30

Q. Do you add that - educational? A. Yes.

Q. Do you tell his Honour that these three areas have scientific value to some people? A. Which areas?

Q. The three that I have nominated? A. You are asking me if I think they are of scientific value?

Q. Yes. A. At the present time, if I were going to do a study on one of those vegetation types, I would probably go to the Myall Lakes. 40

Q. You would not go to this area at all? A. It is difficult for me to say. I would look on it as a second ---

Q. Apart from people like yourself, to whom



would they have scientific value? A. I am told that there is an American doctor of Physiology of Marsupials who is ---

Q. Anybody else? A. That, and my own particular situation are the only two cases I know of.

Q. The only two cases that you know of, to whom they would be of scientific interest? A. Yes.

Q. I suppose by recreation you mean those people who care to walk through pleasant trees? 10

A. Here again, it is just my personal opinion, but I think you could provide for a variety of recreational experiences in this particular area.

Q. What sort of trees are growing in the rain forest? A. It is characteristic of rain forests that you have a large number of tree species.

Q. Principally what sort of species are they?

A. Principally - I could give you names if you like?

HIS HONOUR: Q. I think that is what you are being asked to do? A. There are two species of pitto- 20  
sporum, endiantra sieberi, bruinia oblongifolia. There is a species of guioa.

MR. MILNE: Q. Are they the principal ones?

A. They would be some of them. I have a species list for the area.

Q. You have a species list for the area?

A. Yes.

Q. Do you tell his Honour that this is the closest rain forest with those species to the metro- 30  
politan area? A. It is the closest one on sand, to my knowledge. These species might occur on other types of geology.

Q. For example, there is a well known one in Hornsby, isn't there? A. This would be on Hawkes-  
bury Sandstone.

HIS HONOUR: Q. Do you know it at all? A. No, I do not, but you would have some species probably there that were present at North Entrance. You would have other species that were not present. 40

MR. MILNE: Q. And there are other well-known ones near Wollongong? A. Are you referring to Minna Murra Falls?

Q. Yes? A. It is not on coastal sand.

Q. So the thing that makes this rain forest significant is that it is on sand? A. It is one of the things that makes it interesting.

Q. But otherwise it is not much different to a lot of other forests? A. It is like anything else. For some people rain forests are all the same. If you look at them more closely you notice more differences.

10

Q. Tell me this - the Angophora or red gum is probably the most common tree that there is around the Sydney area, is it not? A. It is certainly one of the most common.

Q. So if one went from here to Newcastle, one could fairly safely say that 50% of the trees you saw would be Sydney red gums? A. I suppose so.

Q. That is correct, isn't it? A. Yes.

Q. There is absolutely nothing unusual about a Sydney red gum, is there? A. About that particular tree, no.

20

Q. And I suppose there are countless thousands of examples of Sydney red gums within 100 miles radius of Sydney? A. Individuals?

Q. Individuals? A. Yes.

Q. And many, many examples of them appearing in what you would call a forest? ---

HIS HONOUR: When you say "a forest" ---

MR. MILNE: Q. I am sorry - in similar circumstances to what they appear at Tuggerah? A. Well, the important difference, as I have said, is that they are growing on sand at Tuggerah. Around Sydney they are on Hawkesbury Sandstone.

30

HIS HONOUR: Q. Do you find an area of such a size where most of the trees are Angophoras? A. Yes, I suppose - I am not - I have only been in Australia for three years, and I am not that familiar with the Sydney area in detail, but I suppose you could find other areas of 2,000 acres with Angophora.

MR. MILNE: Q. 2,000 acres? A. I believe that is the size.

40

Q. You believe that is the size of the red gum

forest in Tuggerah, do you? A. In fact the size of the Angophora forest would be smaller than the total area.

Q. So once again, the only thing that makes it different to others is that it is on sand? A. Well, that is not the only difference. That is a fundamental difference, and from that fundamental difference follows differences in species. There are some species that will grow on sand, that won't grow on Hawkesbury Sandstone. 10

HIS HONOUR: Q. Different species of Angophora?  
A. No. I am sorry - we are just talking about Angophora?

MR. MILNE: Q. Yes. A. This tree would probably be genetically different. It is the same species, but genetically it is probably very different if it is growing on Hawkesbury Sandstone.

Q. It would be correct to say that the Angophora was one of the most easily propagated trees that there is? A. I don't know. 20

Q. You would know, wouldn't you, that one can go to any nursery in Sydney and buy as many as you like? ---

HIS HONOUR: You mean you can go to some nurseries and buy as many as you like?

MR. MILNE: Q. You know, I suppose, that the Forestry Department conducts a big nursery out towards Castle Hill? A. Yes.

Q. You have been there? A. I have been by. 30

Q. You would agree that if one went there one could buy any quantity of Angophoras? A. I don't know specifically what they grow there.

Q. You would not deny they can be easily propagated? A. I really don't know. I have never grown Angophoras.

Q. You told us that you - and correct me if I am wrong - you would expect the rate of growth of an Angophora to be about 10 ft. in 10 years?  
A. This was a tentative figure I gave. 40

HIS HONOUR: Q. That was a view you expressed?  
A. Yes.

MR. MILNE: Q. Have you given that some more thought?

A. That is my opinion based on the extent of my knowledge. I have not watched these trees.

Q. It would be preposterous to think one could grow to 15 ft. in 5 years? A. I would not say it was impossible. It is such a variable thing, because it depends on where the tree is growing, and how ideal conditions are. It depends on the seed source, or whether it is good genetic stock.

Q. One could amend your version and say anything from 15 ft. in 5 years to 10 ft. in 10 years? 10

A. I suppose it would encompass that.

Q. If you take 15 ft. in 5 years, you have a tree which regenerates fairly rapidly? A. It would be better to say that you found an individual that will grow that fast. Whether they will all grow that fast is another matter.

RE-EXAMINATION:

MR. WILCOX: Q. When a scientist such as yourself is looking at an area like North Entrance, is it possible to determine its value tree by tree, or do you have to look at the area as a whole, and the inter-relationship between the various species? 20

A. Its value scientifically?

Q. Yes? A. No. An ecologist is more concerned with relationships between individuals of the same species. There are different species and relationships with the environment. So if the area has a value, it is of the whole area, not tree by tree.

Q. You have said in contrast to other areas Mr. Milne referred you to, this was an area on sand. Does that have any interest so far as you are concerned? A. My own particular research interest at the moment is on the effect of mining on this type of vegetation, and so in fact if the area is mined I would be interested in it as a study area. 30

Q. What I was rather putting to you, if you had an Angophora forest on sandstone, and you had an Angophora forest on sand, to a scientist is there a difference? A. Yes, there could be a lot of differences. I mentioned differences in species, but there might be very marked differences in the functioning of the system, how rapidly energy cycles, and how rapidly nutrients turn over. It might be very different on sandstone. 40

HIS HONOUR: Q. Has your investigation shown there is a large amount of sand along the coastal areas?

S. Clark, re-x

I do not mean just on beaches, but in from the beaches? A. I think you would have to refer to a geological map to get that exact information. I think the belt of sand is a fairly narrow one, and would be about two miles wide down the length of the coast on an average. It would be wider in some places and narrower in others.

(Witness retired and excused.)

FLORA TURTON

10

Sworn, examined, deposed:

TO MR. WILCOX: My full name is Flora Turton. I live at 165 Kingsland Road, Bexley North.

Q. I think you are a senior tutor in Geography at the University of Sydney? A. Yes.

Q. You are an Honours Graduate in Arts from that University? A. Yes.

Q. When did you graduate? A. 1967 I graduated.

Q. I think you have been lecturing in the Department of Geography in the University for about six years? A. Five years. 20

Q. Is your special interest geomorphology?  
A. Yes.

HIS HONOUR: What is that, may I ask?

MR. WILCOX: Q. Would you explain to us what is geomorphology? A. Geomorphology is the study of land forms. It is just simply made of the two words, geo the earth, and morphology, the shape or form of the earth.

Q. Do you specialise in that? Within your work at the University? A. Yes. 30

Q. You have a holiday cottage at Tuggeralong?  
A. Yes.

Q. Where is Tuggeralong in relation to the village of The Entrance or Tuggerah Lakes? A. It is west of the village of The Entrance, slightly north-west of the village of The Entrance. It is situated on the shore of Tuggerah Lake, but it is the inner shore, facing opposite the North Entrance peninsula. 40

HIS HONOUR: Q. Is it on the north side of The

Entrance or the south side? A. It is on the north side of The Entrance.

MR. WILCOX: Q. But it is on the western side of Tuggerah Lake? A. Yes.

Q. So you look across Tuggerah Lake to North Entrance peninsula. A. Yes.

Q. Are you familiar with North Entrance peninsula from having been on it? A. Yes.

Q. On many occasions? A. Yes. 10

Q. How long have you known the area? A. Since 1966.

Q. Is there any particular geomorphological feature near the Entrance to which you direct students from time to time? A. We do direct students to the peninsula, but also to the deltas that are built out into the lakes by Wyong Creek and Ourimbah Creek. Particularly Ourimbah Creek which flows out through two long narrow banks. It stretches about two miles or so out into the lake, and this is a special type of delta that is being studied by geomorphologists overseas and also in Australia, and the mode of formation of those deltas is not yet known. There are several theories, but students are studying the sediments, their form, and the currents in the lake, and the wave patterns, to try and understand how these particular deltas have been formed. 20

Q. That particular delta is at Chittaway Point?  
A. Yes.

Q. That is on the western side of Tuggerah Lake? 30  
A. Yes.

Q. Looking across towards North Entrance? A. Yes.

Q. Fairly close to your holiday cottage? A. Yes.

Q. Either in conjunction with you or separately, do students from the University to your knowledge make some study of the land form of The North Entrance peninsula? A. Yes.

Q. What is the particular interest in the land form of the North Entrance peninsula? A. I lecture to third year students in geography at the University of Sydney on coastal land forms, and this includes places like lagoons, of which Tuggerah Lake is a very fine specimen, and the deltas of North Entrance peninsula, and the beaches, and the beach forms 40

generally, and the students have to do field work, to go and study these things in the field, and they look at the shape of the dunes, the way they have been formed, the effect of wind on them, the type of vegetation, and the type of soil in the dunes and so on.

Q. Does North Entrance peninsula have any particular value so far as that study is concerned, over and above other areas? A. The areas that are left that are not built on, that are close to Sydney and Newcastle, where we have such large student populations, are becoming rarer. There are not many places like that left in the natural state where they can study them. 10

Q. What would be the alternative if North Entrance peninsula were not available? A. Well, I cannot think of a nearby alternative. Of course we have not had to look for one, because we had that there; but they look in a minor way at places like Cronulla and Narrabeen Lakes in 1st year, to see the sort of thing that has been built on, but they cannot see a natural area close to Sydney like that. They used to look at the areas at Umina, but that has been built on now. 20

Q. Is this an important part of the course?  
A. They do a whole term in third year on coastal morphology, and they do this which occupies a whole term in third year.

Q. Is it of some interest in that course to relate particular plant communities to dunal formations? A. Yes. 30

Q. If one changed the dunal formations and re-vegetated, would the area have any interest from the student point of view? A. They do study vegetation associations, associations between the type of soil and the type of vegetation association on the dunes. They study it in terms of a succession, and this is a succession of plants from the shore inwards, in terms of distance from the shore, and also they study it in terms - there is a variety in this way, that the plants growing in size and complexity from grass at the shore line, in tree shrubs and thickets into the forest. But also they study it in terms that it is also related to moisture, salinity and soil development, and they learn that certain types of vegetation can only grow on certain types of soil. There is a good variety of this on the North Entrance peninsula. 40

Q. Is there any particular section of the 50

peninsula, by reference to its dominant vegetation, which you regard as more important than others?

A. I like to think of it as an example of the fact that there you have got a succession from the grasses right through to the red gum forest, or where you have the rain forest and moister type of vegetation. This is somewhere where they can see them all in sequence.

Q. This is if you mine any part of it, even though you leave other parts, you diminish the value? 10

A. Yes.

Q. You have also made an investigation of areas that have been mined in the central coast area?

A. Yes.

Q. You have taken some slides which show the sort of conditions which occur presently in The North Entrance, and what you have noticed in other places?

A. Yes.

Q. How long have you known the central coast area? 20

A. Since 1966. In 1965 I visited it, but I have known it well since 1966.

Q. I think you have taken first of all five slides which show areas on The North Entrance peninsula as they are at the present time? A. Yes.

Q. You might identify those. (Handed to witness.) If you would like the dark --- A. Just identify that they are my slides?

Q. Just check that they are areas within the peninsula at the present time? A. Yes. 30

(Five slides, excluding writing, tendered and marked Exhibit "J".)

Q. Have you taken four slides showing areas on the peninsula which have already been mined? A. Yes.

Q. I think you have marked three of them as "North Entrance". And they are on the beach side of the lower section of the peninsula, are they?

A. Yes.

HIS HONOUR: Q. That is on the coastal side?

A. Yes. 40

MR. WILCOX: Q. Would you look at the copy of Exhibit 1 and tell me by reference to the numbers of the mining leases, approximately whereabouts



these three slides were taken? A. I would think that they would be on mining lease 42.

Q. How recently were these slides taken? A. On the 13th February this year.

(Three slides of mined areas tendered and marked Exhibit "K".)

Q. Do you know how long ago approximately it was that that area was mined? A. No, I don't really know. It would be since 1966.

10

Q. In the photographs one mostly sees grasses in the area? A. Yes.

Q. Did you know the area before it was mined?  
A. Yes.

Q. What was there before? A. There was a much thicker vegetation, and there was a thicket of ti-tree, melaleuca, banksia and cork wood trees. There were some areas more like a rain forest, and some more like an open association of banksias.

Q. Does one find those woody plants there at the present time? A. No, not where there has been mining.

20

Q. There is one slide of Soldiers Beach at North Entrance. Can you tell us approximately where that was taken? A. Are you going to show me the map again?

Q. Yes. (Handed to witness.) A. It shows Soldiers Point and Pelican Point. It was taken slightly south of Soldiers Point looking towards Pelican Point.

30

Q. How long ago was that area mined? A. That was being mined in 1966.

Q. What do you say about the sort of vegetation there now, compared with what it used to be?

A. Now there is only grasses and creeping plants, and no shrubs and trees, where it has been mined so far.

Q. Were there shrubs and trees before? A. Yes, very close to the beach.

HIS HONOUR: Q. When was that taken? A. Soldiers Beach ---

40

Q. When? A. That was taken on 13th February this year.

F. Turton, x

MR. WILCOX: Q. All these slides were taken on that date, all the ones on the central coast? A. No. Some of the very first lot were taken earlier than that, but most of them were taken on the 13th.

(Slide of Soldiers Beach area tendered and marked Exhibit "L".)

(Witness stood down.)

MR. MILNE: On our side, we would be anxious to have this evidence continue on Monday, and we would formally make application to have a view of the Munmorah area and the Tuggerah area, and if this would be acceptable to your Honour, to adjourn until 6th and 7th March. 10

HIS HONOUR: That would certainly coincide with what is convenient so far as the Court is concerned. At this stage I adjourn the matter until Monday, and perhaps have a view on Tuesday.

(Further hearing adjourned until 10 a.m. on Monday 29th February, 1972.) 20

IN EQUITY

CORAM: HOPE J.

WYONG SHIRE COUNCIL v. ASSOCIATED MINERALS  
CONSOLIDATED LTD. & ANOR.

FIFTH DAY: MONDAY, 28TH FEBRUARY, 1972

FLORA TURTON  
on former oath,  
evidence-in-chief continued:

MR. WILCOX: Q. Would you look at Exhibit 1 and would you identify on that exhibit an area at Elizabeth Bay where you took some photographs recently - an area you know as Elizabeth Bay? A. Well, I could not be absolutely sure on which mining lease they are on; I would think it would be either mining lease 35 or mining lease 40. It would be in that area. 10

Q. In the area enclosed within the red line in the northernmost area shown in red on Exhibit 1?  
A. Yes.

Q. You think it is either m.l. 40 or M.L. 35?  
A. Yes, I think that is probable. 20

Q. Will you now look at Exhibit "H" and tell the Court whether you took those slides? A. Yes, I took those slides.

Q. Were they taken in the area to which you have just referred? A. Yes.

Q. Did you know that area before it was mined?  
A. No, I did not know that area before it was mined.

Q. Those two slides illustrate the country as it was a few weeks ago when the photographs were taken?  
A. Yes, on the 13th February. 30

Q. Would you look at these two slides and tell me did you take those slides also in that area?  
A. Yes, I took those slides in that area.

Q. Do they similarly illustrate the country you saw quite recently? A. Yes.

Q. Did you know that area before it was mined?  
A. No, I did not know that area before it was mined.

HIS HONOUR: Which area is that?

MR. WILCOX: Q. It is Elizabeth Bay, the same area?  
A. Yes. 40

(Two slides of Elizabeth Bay area tendered and marked Exhibit "M").

Q. In your studies and teachings as a geomorphologist, have you been concerned with the stability of sand dune systems? A. Yes.

Q. Have you made any particular study of sand dunes at any particular place? A. I have made a study of them in the Tuggerah area on the peninsula.

Q. You have made a study of the sand dunes? 10  
A. Yes.

Q. If the stability of a sand dune is disturbed are problems encountered in regaining stability?  
A. Yes. If it is disturbed naturally by fire or wind, you still have to - if there is no planting, you have to wait for the plants to grow naturally. If there is good rain perhaps they will. If there is much disturbance of the soil, only very low grass-type plants can grow there, but it is quite a natural thing for the dunes and the sand close to the beach to be vegetated by grass-type plants. 20

Q. Once for any reason the vegetation is removed and the sand disturbed, can you tell the Court whether there is any danger of the dunal system moving inland? A. Yes, if the vegetation cover is removed and you get storms with strong winds the sand can move. Areas where there has been over-grazing of sand dunes there has been considerable trouble in various parts of New South Wales with sand moving. It moves inland and covers vegetation. 30

Q. You have made some studies on the south coast of New South Wales? A. Yes.

Q. Is that Nadgee, quite close to the Victorian border? A. Yes.

Q. That is not sand mined? A. No, grazing.

Q. The disturbance there has been by grazing?  
A. That is right.

Q. Have you observed the inland progression of the sand dunes in that area? A. Yes. 40

Q. I think you have taken a couple of slides which illustrate the current position at Nadgee?  
A. Yes.

Q. Is the sand dune shown there greater than it was when you first knew that area? A. Yes. These dunes do move repeatedly. They cover and uncover vegetation. You can see in one of the slides there some low vegetation that has been uncovered. There are dead stumps there and you can see where the sand is moving over vegetation and burying it.

Q. Have you observed this yourself at Nadgee over a period of years? A. Yes.

10

(Two slides of Nadgee area tendered and marked Exhibit "N").

Q. I think you are aware from your observations in the central coast area that it is the practice of sand miners to attempt some re-vegetation after the sand mining operations are finished? A. Yes.

Q. Will you tell the Court the sort of circumstances in which in your opinion, if any, there was some risk of dunal movement and progression such as that that you referred to at Nadgee? A. It is only possible to satisfactorily re-vegetate the dunes with grassy stuff and perhaps low scrubs in the condition that they are after mining, because the proper soil profile has been disturbed. I believe you retain some of the topsoil that has some humic material in it, and this holds the moisture and you can grow low scrubby stuff. But if you have drought and they die, or unfortunately fire came in and destroyed this, which could easily happen, you can get the vegetation destroyed, and with perhaps strong winds the sand could move. I cannot say that this will happen. I cannot say this will happen, but alternatively I think that nobody can honestly say that it won't happen either. There is quite a severe danger of this happening. If the vegetation, which is only a grassy type cover, is destroyed, then the sand can move under the influence of strong winds.

20

30

Q. Do you know an area at Putty Beach in the Gosford Shire which was mined about 1964-65? A. Yes.

40

Q. Was that at a time when there were fairly severe drought conditions generally in the central coast and elsewhere? A. I could not say about whether there were any drought then or not.

Q. Have you looked at the Putty Beach area recently to see how the vegetation has fared? A. Yes.

Q. I think you have taken five slides? -

HIS HONOUR: Q. Is that south of Kilcare? A. Yes, it is just the other side of the peninsula from Kilcare Wharf.

MR. WILCOX: Q. Will you check those slides? Does that illustrate the area of Putty Beach which was mined, as you understand it, about seven years ago? A. Yes.

HIS HONOUR: Q. That is the northern end? A. Yes.

Q. Isn't there a camping area there? A. Yes, I think there is. 10

Q. When were these slides taken? A. On the 13th February.

(Five slides of Putty Beach area tendered and marked Exhibit "O").

MR. WILCOX: Q. If there were any possibility of disturbance of the Tuggerah Lake shore, from your knowledge of the area would that have any adverse effects? A. Well, you only have a lake there at Tuggerah because you have that peninsula. That might sound an obvious sort of thing to say but people tend to forget that because the peninsula is there you have a lake. If you did not have the peninsula you would have the open ocean and it would make a great deal of difference to the recreational area. If the vegetation was destroyed and the sand moved, it could move into the lake and cause shallowing of the lake, it could interfere with the weeds and perhaps interfere with the prawning grounds and with the fishing grounds. If enough of it moved you could get a less secluded area of lake altogether. This is an extreme view, thinking that it might do this, but the possibility is there. If the vegetation is destroyed it could definitely move. 20 30

Q. There is a fairly substantial weed growth along the lakeside edge of the peninsula, is there not? A. Yes.

Q. Is this a fish breeding ground? A. Yes.

Q. The area where you have your holiday cottage at Tuggeralong, is that an area where there are other houses? A. Yes. 40

Q. Can you give some idea of the number of cottages there would be at Tuggeralong? A. Quite a large number of the blocks are built on now. There are not many vacant blocks at all along that inner

lake shire. There are certain areas where there is not much building, but where I have my cottage there are houses on either side and most of the way right around north to Toukley there are houses. There are very few blocks without houses.

Q. So there would be a substantial number of people who would look across to the north entrance peninsula? A. Oh yes.

Q. Perhaps expressing a personal opinion, but what is your own view of the outlook you obtain looking across to the northern entrance peninsula at the present time? A. You look across at an area that is clothed in forest and some scrub, and it is one of the few areas of untouched natural bushland around the lake shores. Almost all the rest of the lake shore has been subdivided for housing or other purposes. There is around most of the perimeter a 100-foot wide reserve for public recreation but behind this most of it is cut up into residential blocks, or for a surf club, except the area of the north entrance peninsula. 10 20

HIS HONOUR: Q. Where you are on the other side of the lake, you said you were on the foreshore. Are you right on the foreshore? A. We are behind the 100-foot wide reserve.

MR. WILCOX: Q. Does the preservation of the bushland outlook mean much to you personally? A. I like to look at it, yes. It really to me greatly improves the view. 30

CROSS-EXAMINATION:

MR. MILNE: Q. I suppose it would be fair to say that you have a very personal interest in this place? A. I have a very personal interest in the Tuggerah Lakes area.

Q. And you have a very personal interest because of your view that you have across there? A. I have a personal interest and a professional interest in Tuggerah Lakes.

Q. I just want you to agree with me, because of the situation of your cottage you have a very personal interest in this case? A. Yes. 40

Q. Your interest is to see that no beach mining takes place, isn't it? -

HIS HONOUR: You mean on the peninsula?

MR. MILNE: Q. On the peninsula? A. I would prefer no beach mining to take place, yes. But that is not just a personal view. It is a professional view also.

Q. One thing at a time. It is true, isn't it, that from your own personal point of view you do not want to see any beach mining taking place?

A. I find that difficult to answer because I cannot separate my personal view from my professional view.

10

HIS HONOUR: Q. Let us suppose you had nothing to do with ecology, but you simply had a house there looking across the view? A. Yes, then I would not want to see it mined.

MR. MILNE: Q. You would not want to see it mined at all, would you? A. No.

Q. May I suggest to you that on 13th February, 1972, you went out and took a number of photographs, including some of the ones that have been tendered here today and last week? A. Yes.

20

Q. I suppose you went out there and took those photographs in the knowledge that you were going to come along and give evidence in this case? A. Yes.

Q. I suggest to you that you went out and took photographs to illustrate the point of view that you seek to put? A. Yes.

Q. That is correct, isn't it? A. Yes.

Q. You did not, for example, go out and take photographs of anything that would be contrary to the view that you wanted to put? A. Well, I took a photograph - the area that has been regenerated by the company that you represent, that has their sign on it. That says they have regenerated the area, and I thought I was being fair, in that I photographed the area that they wanted people to look at, and I thought that by doing that I was being as fair as I could.

30

Q. What you tell his Honour is this, that the photographs you have taken here are a fair representation of the area in Munmorah that my client company is mining? A. Yes, I would say they were. There may be some areas that perhaps were slightly better. I was limited in time and the amount of film. I took the area that you had labelled, and I took some of the area that was not so far advanced, and so on. I tried to take what I thought would be a fair representation.

40



Q. It would be correct to say that you sought out what you regarded as the best of the restored area? A. I don't think it would be quite fair to say that I had done that. Because of the limited time I did not go over the whole area looking for the best area. I photographed the one that your company had labelled, and obviously I would have thought that they probably thought that was as good as any area that they had regenerated and re-vegetated because they were directing the public to look at it. 10

Q. Can you just answer what I am asking you, please. Would it be correct to suggest that there are areas better than what you photographed, which you purposely declined to photograph? A. No, that would not be fair. I did not see better areas. They may have been there, but I did not see one.

Q. Would it be fair to suggest that you went out for the purpose of photographing the worst areas? A. Yes, I hoped to photograph some of the worst areas as well as some of the others. I did want to find some that... 20

Q. The answer is yes? A. Yes. Oh -

HIS HONOUR: Q. Yes, in respect of some? A. Yes.

MR. MILNE: Q. Because you wanted to come to Court and present these photographs as depicting what was the worst of the areas? (No reply).

HIS HONOUR: Is that what you mean, Mr. Milne?

MR. MILNE: Yes, your Honour. A. I find that difficult - would you repeat it please? 30

Q. I will put it another way. Your purpose was to photograph what you regarded as the worst of the restored areas? A. No. My purpose was to photograph vegetated areas after mining.

MR. MILNE: May I have the coloured photographs, Exhibit 24.

Q. While that is being found, do you know a gentleman in your Department called Mr. Devery? A. Yes. 40

Q. Is he a geographer? A. Yes.

Q. And a very experienced one? A. Yes.

Q. I suppose he taught you when you went through the University? A. Yes.

Q. (Approaching). Take, for example, the picture I show you, No. 6 in Exhibit 24. In your view that would not be a bad example of restoration, would it? -

HIS HONOUR: Do you mean an example of bad restoration or ...

MR. MILNE: Q. Would you agree that is a good example of restoration? A. Well, it depends what was there before. The dunes are well-clothed. If you removed trees, and this is what you have, then it is not yet a good example of restoration. 10

Q. If you assume that the material on it before it was mined was much the same as what that is now, then you would agree that it is a very good example of restoration? A. Yes, I would, if the material was much the same.

Q. You never saw anything like that at Munmorah I suppose? A. The photograph I took near your sign - some of the area there was very similar to this. Don't you think that photograph shows that? 20

Q. You just answer me please, if you don't mind. I will show you now No. 9? A. This is very similar to the area that I photographed. Perhaps there is a few more trees in the background here.

Q. That is a good example of stabilisation, is it not? A. Yes.

Q. Look at No.10. That is a good example of stabilisation, isn't it? A. Yes. 30

Q. And No.5? A. Well, the foreground is a good example of stabilisation. The background is presumably the beginnings of a good example of stabilisation.

Q. You can see it is the very early stages of it? A. Yes.

Q. The foreground is a good example of stabilisation, isn't it? A. Yes.

Q. I show you one of a beach area right on the frontal dune. That is a good example of an early stage of stabilisation, isn't it? A. Yes. 40

Q. And by the way, do you recognise these photographs - three - the area shown in this photograph?

A. This I think would certainly be the Elizabeth Bay area, because I think I recognise this headland here. It makes it very difficult for you to recognise an area unless you have some landmark like that, and I am pretty sure it is in the Elizabeth Bay area.

Q. By Elizabeth Bay you mean the area between the Pacific Ocean and Munmorah Lake? A. Yes. 10

Q. And No.3 you can see are two distinct stages of restoration, can't you? A. Well, there is two different types of vegetation shown.

Q. If you assume they have both been mined, the one on the left is an example of good restoration?

A. It is an example of good cover of the dune area, not necessarily of restoration, because I don't know what was there before.

Q. I suppose No.2 you would agree shows a good example of restoration, assuming that similar sort of material was there before? A. Yes, some of it, as I said before, is in the beginning stages, and with good rain presumably it will improve to this, but you have a couple of rather bare areas, but whether they are likely to get worse or not is hard to say. 20

Q. You would expect to find them in their natural state? A. Yes, and in the natural state wind does blow those areas out, and forms blow-outs and moving dunes. 30

Q. You recognise No.1? A. I recognise the island, yes.

Q. You see the various stages of restoration there? A. Yes.

Q. The foreground is a good example of restoration, isn't it? A. Well, it is a good example of the beginnings of restoration.

Q. No.6? A. Is this the one we looked at first?

Q. Oh, did we? At any rate, you would agree that, assuming the same sort of material was on there before mining, that is a good example of restoration? 40

A. If that is the same sort of vegetation, it would be a good example.

Q. If you look at No.7 and make the assumption

that, apart from the area on the right, that panorama you see over the back has all been mined? A. Yes.

Q. That is a good example, isn't it, of the way it can be stabilised and restored? A. Yes.

Q. I want to show you a photograph now, No.11 and I do not suggest that you know that area. (Handed to Witness). A. No, I would have no way of knowing whether I knew it or not.

Q. I suggest to you that on one side of the road has been mined and the other has not? A. Well, 10  
if that is the case, then it is a good example of restoration.

Q. Would you be prepared to go so far as to agree with me that you could not get any better - look at it - in your opinion? A. Well, that is perhaps asking me for an expression of opinion that would be a little bit difficult. I think I am quite happy to say that I thought that side looks just as good as that side, and vice versa. 20

Q. One side looks as good as the other? A. Yes, more or less.

Q. So may I take it from you that, given a restoration of the standard shown in No.11 you would then, would you not, concede that in this particular area the mining of the area is not going to do the sort of harm that you have suggested it will do?-

HIS HONOUR: Mr. Milne, I think you should limit that. What is the particular matter you are talking about - stability or restoration in due course to the same position? 30

MR. MILNE: Q. Restoration in due course? A. That certainly looks like a very good example of restoration. I don't know how long it has taken to be as good as that. You still have the problem presumably that you might not have such good climatic conditions as operated during that restoration period.

Q. You do not suggest, do you, that the deltas that you spoke of have any relevance to the area that my client wants to mine? A. The only relevance that they have is that if they were not in a sheltered position, as they are on the lake because the peninsula is there, stabilised, they would not exist. If they were in the open ocean, or if the lake was rougher because you did not have such an extensive peninsula, they could be destroyed. They are part of the general value of the area, as educational and recreational. 40

Q. They are some miles away from the peninsula?  
A. Yes, two, three, four miles - perhaps three miles, because they are on the other side of the lake.

RE-EXAMINATION:

MR. WILCOX: Q. At various times you were asked about restoration and stabilisation. Do you put different meanings on those two words? A. Yes, I do. 10

Q. Would you tell us what you understand by each in this context? A. Stabilisation is clothing the dunes in vegetation that is strong enough to bind the dunes together, to prevent movement by wind. That is stabilisation. They hold the existing shape of the dunes because vegetation covers and clothes them, and prevents the wind from moving the sand. Restoration means replacing the type of vegetation that was there before mining, so that it is the same sort of vegetation association. 20

Q. Does that mean that you may have stabilisation without achieving restoration? A. That is right.

Q. You were asked when looking at photographs of the Munmorah area to assume that the same material is on the photographs as was there before. Is that a basic assumption in the replies that you gave? A. I said ...

HIS HONOUR: Q. Consideration of restoration?  
A. Yes, in relation to restoration I said is this what was there before. It is only restored if it is similar to what was there before. 30

MR. WILCOX: Q. You would not know whether there were substantial trees there or none at all? A. No, not in that area.

(Witness retired and excused).

(Short adjournment).

BRUCE McKENZIE

Sworn, examined, deposed

TO MR. WILCOX: My full name is Bruce McKenzie. I live at Darford Road, Thornleigh. I am a landscape consultant, under the firm name of Bruce McKenzie & Associates, of North Sydney. 40

Q. Are you a Member of the Institute of Landscape Architects? A. That is correct.

F. Turton, xx, re-x, ret'd

222. B. McKenzie, x

- Q. I think you are a member of the Federal Council of that Institute? A. That is right.
- Q. You are a member of the Architects' Panel advising the National Parks and Wildlife Service of New South Wales? A. Yes.
- Q. I think you are a lecturer at the University of Sydney in landscaping - A. Landscape architecture applied to town planning.
- Q. That is a part-time lectureship? A. That is correct. 10
- Q. You have recently been nominated to a committee established by the Minister for Environmental Control called the Committee on the Visual Environment? A. Yes. It is a Committee to study and advise on matters affecting the visual environment within this context of the environmental control.
- Q. That is Mr. Beale's Department? A. Yes.
- Q. I think you have had considerable practical experience in landscape architectural projects, including some large projects in Canberra? A. Yes, that is true. 20
- Q. Without being exhaustive have you done a considerable amount of work for the National Capital Development Commission on the planning of Tuggerawong in the Australian Capital Territory? A. Yes.
- Q. That is the new area near the Murrumbidgee River, south-east of the Canberra City? A. Yes.
- Q. Does that include preparation of a master plan for a large park area along the river, and also investigation of open space areas within the Tuggerawong area? A. That is the general principle of the Commission there, to advise on and help to define the boundaries and prepare basic development plans for major open space systems within the new city. 30
- Q. Have you also done commissions for the National Capital Development Commission in relation to the landscaping of the National Art Gallery in Canberra? A. I am currently involved in the development of the landscape work associated with the gallery. 40
- Q. At Campbelltown in New South Wales, I think you have been involved with Lend Lease Corporation

in landscape advice in relation to a new residential development for a population of some 40,000 people? A. That is true.

Q. I think you have been involved in the landscaping of the West Head area at Commodore Heights on behalf of the National Parks and Wildlife Service? A. To be completely truthful, on behalf of the Ku-ring-Gai Chase Trust at the time, which has in turn now been taken over by the Wildlife Service. 10

Q. This was the project that was done three or four years ago? A. 1964.

Q. As a result of which the road has been extended through to Commodore Heights? A. Yes.

Q. Did you advise in the landscaping work which was then done? A. That is right.

Q. You were also involved, and are presently involved with the Service in respect of Clark Island in Sydney Harbour? A. Yes.

Q. Were you involved with the Department of Civil Aviation on the landscaping of the International Air Complex at Mascot? A. Yes. 20

Q. I think there are quite a number of other major commissions you can give if required? A. Yes.

Q. Have you been on the north entrance peninsula? A. I have, yes.

Q. How well do you know it? A. My most recent trip was about November last year, but prior to that I have known it by canoeing on the lake, with the river canoeing club about twenty years ago. Since then during a sort of young married period I knew the north entrance peninsula via a cottage which was owned by a friend of the family, so there were just a few odd weekends, and that is over a period of say eighteen or twenty years. 30

Q. Have you walked through the peninsula area away from the roadway? A. Oh yes.

Q. How would you describe the vegetation which is to be found on the peninsula at the present time? A. Well, to me, where I basically enjoy coastal scenery very much, and the natural sort of associations of land form and vegetation, this is in addition to all of the normal delights of the coast, the sea and the sun and so on. Nevertheless, this particular peninsula area is without a doubt quite 40

unique amongst coastal areas generally. There is a special quality about it which is difficult to find in other places. There are some instances of a similar sort of quality, and particularly in my opinion special in a very powerful sort of environment thing. If I can enlarge on that, the Angophora Forest, for instance, the very strength of its spreading and carrying on for thousands of acres in what you can only describe as a sort of purity of character. That is, this one species in all sorts of different physical and visual forms, as a result of shaping by the elements, and as a result of differing sort of development in terms of age, produces a great environment thing within which the observer is just contained. He is part of it, and it is immensely large in relation to the pedestrian, and not to the car driver. It is a grand sort of environment which is a major part of experience in visiting that area. The individual character of the trees would be related in many cases to the maturity of them, the fact that they are undoubtedly hundreds of years old, and this sort of period of time is very necessary to produce the sorts of characteristics that make many of the trees so interesting in their present condition. 10 20

Q. Are there other natural - other vegetated species on the peninsula which you regard as important? A. Well, again like the coastline which is generally an important and valuable sort of commodity anyway. Wild flowers can be observed as being a very pleasant part of the outdoor environment, and I cannot deny that wild flowers would occur in many other places as well in different forms. Associated with the Angophora Forest and sand dune flora is a particular type of wild flower community, very much typified by vast quantities of flannel flower, just as an example. But nevertheless it is the complexity of that that forms a sort of continuous carpet on the floor, of the forest over large areas. This was the thing that impressed me very much in November last year, just the profusion of display, which again would be very, very difficult to find elsewhere. 30 40

Q. That would be one of the better times of the year? A. This is a typical springtime display, but nevertheless it would have started in July/August, and it was November when I was seeing this example, so it was a fairly extended period as well.

Q. Have you any opinion to offer about the possibility of natural regeneration of such wild flowers after sand mining operations? A. Yes, I have very definite opinions. There is nothing I would like 50



more myself personally than to be able to organise a reproduction of that sort of ground floor cover within my own work, in many instances. I know that I cannot do it. The sand mining organisation would have a slight advantage over me in terms of relationship to my work, in that they have initially access to that same ground that carries hopefully the seed material and whatever sort of debris occurs naturally in the soil as a result of the wildlife community development there. But again I am not in any way confident that from the point where this material is sort of bulldozed to one side and left to stand for weeks, months, years, whatever the case might be, and then re-spread, and then in a situation where, again applying myself, it would be as if I was hoping magic to occur - just spread this material and expose it to the weather again, having created a completely vastly new environment which implies tremendous natural hazards to the growth of anything, plus the storage factor which affects questions such as the viability of seed, and for how long. 10 20

Q. This is storage in the topsoil? A. Yes. Some seed, for example the Christmas bush, needs to be in a situation where it is capable of germinating almost within days of the actual ripening of the fruits. So from that extreme through to another, there are all sorts of different degrees of responsiveness. 30

Q. The longer the storage of the topsoil, the more species you would expect to lose? A. Yes.

Q. Is there any loss of the germination because of the breaking up of the existing patterns in the soil, as to distribution of chemicals and the like? A. I do not feel qualified to answer in regard to the chemical analysis of the soil, other than as far as I can extend myself, to understand soil structure involving what was originally sand grains, gradually by natural processes becoming part of a mixture with humus materials. The same humus materials related to this chemical analysis would have differing sorts of properties throughout the profile of the soil, which in turn has been a natural build-up over the years. To bulldoze that again to one side, to stockpile and store it, and then to relocate it cannot possibly cause that same natural profile to occur. Another point re the germination of seed - of all the seed that is produced and which might lie dormant all ready to germinate in a natural position, a very tiny proportion of that seed will actually ever come into being as seedlings, and yet that seed is existing in the very top surface, the 40 50

crust of the soil, in the absolute optimum seed-germinating situation that nature can provide. Again, to produce the top layers as a stockpile of material and spread this where some seed may happen to occur in a changed or altered surface condition, but most of the rest will be a quarter of an inch, two inches, six inches, twelve inches below the surface, in a situation where there is no hope in the world of the seed ever germinating.

10

Q. So that even if it remains viable, you reduce the number of seeds ... A. The prospects of being reduced by so many different factors until the point where the topsoil is again exposed.

Q. Have you had some experience in regard to the job of stabilising sand and then growing large plants on sand in connection with the International Terminal job at Mascot? A. Yes.

Q. Have you experienced problems in doing that out there? A. If I could just explain briefly the pattern that is followed. The work was designed by my office. It went out to tender. Amongst three or four tenders received, a successful contractor was accepted, Spray Grass Services Pty. Limited, and during twelve months they carried out the work of establishing a new landscape on the International Terminal site, and knew, particularly in this case because in a similar situation to a sand mined area, the airport site was formed completely from sand dredged from Botany Bay, so that to begin with there was literally a blade of nothing growing there. It was just a vast tract of flat, bulldozed ground. From that point to landscape contract development work started, and during a period of twelve months the work was established, with certain failures here and there. There was a further twelve months maintenance period as part of the contract sum. During this twelve months maintenance period, certain adjustments and re-plantings and so on were carried out, and then approximately at the end of two years of both contract work, development work and actual maintenance work, then a further twelve months maintenance period was established between the Commonwealth Department of Works and the same contractor, mainly because, as distinct from another landscape site, a more typical landscape site, the problem of growing plants even in these cases the naturally indigenous plants of the coastal sand regions, is just so greatly exaggerated in a situation where the basic land soil profile is changed to an unnatural condition, that the whole site is exposed to sun and winds that almost never stop blowing. So in these circumstances we have at

20

30

40

50

Mascot literally recreated our environment in about three years, and all concerned feel that the job is successful and we are happy with it, but nevertheless it has been exposed to all sorts of hazards and difficulties that would not apply to another typical landscape situation.

Q. Did the Mascot job involve the growth of any major trees? A. Well, we are hopeful that many of the trees will become in maturity trees of a reasonable size. I must admit at this stage all I can do is predict that trees such as eucalyptus botriadis which is one of the main elements that might grow to 80 feet high in a sheltered gully, would naturally grow to perhaps 25 to 30 feet high in wind-exposed conditions. We are hoping that we will achieve something like that sort of natural potential on the site at Mascot but there are other trees too. I mean, that is one of the typical sand coastal region species and it is one of say eight or nine different species from these areas. 10 20

Q. That will take some time? A. It will take some time, yes.

Q. Have you in the course of your work had to become familiar with the cost of carrying out restoration of vegetative areas? A. Yes.

Q. And if you were concerned with the cost of restoring as distinct perhaps from merely stabilising the surface of the North Entrance Peninsula, are you able to give any estimate of the sort of figure per acre that is likely to be encountered? A. Yes. Well, I was interested to find this relationship myself, and through studying figures on the Mascot air terminal site and adopting a proportion which seemed reasonable of four-fifths of the site, just pure grass, just simple grassing, in the Mascot case not complicated in any way special land forming, just simply a completely flat terrain with surface folds only for drainage; say four-fifths of a sort of hypothetical site as pure grass and one-fifth as mass planted vegetation, something reflecting the sort of massed heathland type of material which you expect on the coast, that is plants at fairly close centres, plants that grow together but intertwine to sort of shelter one plant from another. 30 40

In a coastal situation you just cannot produce specimen plants. Each plant is part of a, you know, sort of structured association of plants. They make their environment, they shelter each other, so that is for the term massed planting for this 50

last one-fifth. Now applying figures that can be extracted from the contract work at Mascot, I arrive at cost per acre figures up to a point 12 months after the work is carried out, that is 12 months for maintenance and not including any further maintenance work after that which is required, a cost of \$4,400 per acre.

Q. That is the average figure per acre which includes four acres of grass for every one acre of massed planting? A. That is right. 10

Q. And do you take that average over whatever area you are concerned with and you say that is taken by reference to a situation such as Mascot where you do not have any real problems in forming the land, you do not have any great contours?

A. None whatsoever because of the requirements of the airport.

Q. Quite flat? A. In terms of engineering, vehicle sight lines and so on, it is quite flat and there is a complete access to every part of the site. 20

Q. If one were looking at the North Entrance Peninsula and hoping to get back to something like the present contours, would you have cost involved over and above the Mascot figure in shaping the land? A. Yes, I believe that you could not get back to the present contours because present contours come about by a combination process of a shaping to a new profile, at the same time that the surface is actually being stabilised or is stabilised by plant material. Machinery sort of cannot do it, this is in combination; machinery can only produce a profile which is the maximum that that material can be extended in terms of its natural angles of repose and so on, and the second object of applying vegetation is a completely separate one so I do not think it is possible to literally re-instate natural land forms, but supposing we endeavour to form up profiles as close as we are able then this work in itself, because of the complexity of it, is quite a costly job, yes. 30 40

Q. If it were not possible if you believe to re-form the natural profile at the North Entrance, would this be a loss visually for persons living in or around the lake or using the lake? A. Well, I would like to think in terms of people who could use that area which typically could be children of my own or yours or anybody at all who happens to wander into this area, children and adults. I think for the children particularly, apart from 50

the keen student of the coastal environment, for children to lose that quality of natural adventure which is virtually impossible to reinstate in such an area is a tragedy in itself.

Q. I was thinking of the longer visual view. Does the North Entrance Peninsula at the present time have an important visual role in the Tuggerah Lakes area? A. Well yes, I see it as being important firstly as being at this point a rare example of a large tract of really high quality natural land in contrast with the balance of the Tuggerah area largely taken over already by other activities, other developments and so on. The contrast between the two is quite significant and very spectacular. The other is that a lot of the existing outlook qualities of the Tuggerah area, particularly from the lake environment itself, are strongly influenced by the quality of this North Peninsula area and particularly the higher dune portions called angophera forest adding again to the height of that, form literally a quite substantial backdrop of sandhill site and vegetation forest, vegetation to the lake outlooks. 10 20

MR. MILNE: No questions.

(Witness retired).

ALAN STRONG

Sworn, examined as under:

MR. WILCOX: Q. Is your name Alan Strong? A. That is right. 30

Q. Do you live at 3 Cooperook Avenue, Gynea Bay? A. That is right.

Q. Are you at the present time employed by the Department of Education as adviser on conservation and environmental matters? A. The title is adviser in conservation, yes.

Q. I think you hold an Honours diploma in science from the Sydney Technical College? A. That is true.

Q. And which you obtained whilst employed by the Education Department as a teacher? A. That is true. 40

Q. And after obtaining that diploma in the year 1943 did you become a high school teacher, teaching science together with some other subjects? A. Yes.

Q. I think you continued in high school work

B. McKenzie, x, ret'd

230. A. Strong, x

until 1947 when you were appointed a lecturer at  
Balmain Teachers' College? A. Yes.

Q. And did you continue in that position until  
the year 1958? A. 1958.

Q. During that time were you concerned with  
scientific teaching at the Teachers' College?

A. No, not all the time. I was lecturing in  
other subjects as well.

Q. I think in the year 1949 you had been ap-  
pointed by the then Chief Secretary as one of the  
initial members of the Fauna Protection Panel? 10

A. Yes.

Q. Which was established in that year? A. That  
is right.

Q. And did you remain a member of that panel  
until 1958 when you were appointed chairman of the  
panel? A. That is true.

Q. And thus automatically Chief Guardian of  
Fauna? A. Yes. 20

Q. And that was a full-time job, initially I  
think in the Chief Secretary's Department and then  
after 1966 the position was within the Department  
of Lands? A. Yes, the administration was trans-  
ferred.

Q. To the Minister for Lands? A. That is right.

Q. And I think there is an Act that establishes  
the position and the panel? A. There was an Act  
which was revoked in 1967 when the National Parks  
and Wildlife Act was brought in. 30

Q. Did you remain as Chief Guardian of Fauna  
until 1968? A. Yes, when I left the Department.

Q. Then you left the Department of Lands and  
you took up your present position in the Department  
of Education? A. That is right.

Q. Mr. Strong, in your present job are you con-  
cerned amongst other things with arranging field  
studies, opportunities for high school students?

A. Yes, I am very concerned with providing ad-  
vice to teachers about location of sites for field  
studies particularly in the ecological field. 40

Q. Is there an increasing demand for field study  
areas from teachers? A. Yes, there is. In the

secondary schools in particular because of the introduction of the Wyndham Scheme which lays particular emphasis upon biological studies. It is now necessary, for example, for all children from first form to fourth form to take biology so therefore this changed the picture in the scientific field completely in high schools; and in the primary schools there has been an emphasis upon the utilisation of the field since about 1963 when the present syllabus for natural science was introduced. This laid emphasis on field work and there is a gathering feeling amongst teachers and appreciation amongst teachers and amongst administrators in education that it is extremely important that children should experience in the field the things which they are taught in the classroom. 10

Q. Does this feeling reflect itself in any greater demand on you to provide suitable study areas? A. Yes, when I was appointed it was appreciated - the fact that I would be able to provide for teachers information and guidance which they did not have at the time. 20

Q. You have told us that all secondary students between first and fourth year now take science?  
A. That is right.

Q. Including biology; what about in the last two years of the high school course? A. Yes, those students which have what they call a biological elective, they need not do biology but a large percentage of them do find it extremely important to carry out field studies of a very scientific nature. This actually involves measurements in the field and obviously all this work, both from primary right to sixth form, demands an emphasis on actual measurements in the field, of collection of data in the field of naturally evolving systems, and this is most important. 30

Q. Do you know the North Entrance Peninsula?  
A. I do, yes. 40

Q. How long have you known it? A. I suppose I have known it for 30 years or 40 years or thereabouts.

Q. 30 or 40 years? A. Yes.

Q. Have you visited it frequently over that period? A. Yes, when I was Chief Guardian of Fauna we visited - I say the officers and I of the panel visited the area on a large number of occasions, because we put up a proposition for the preservation

of it or part of it for recreational and educational purposes,

Q. So you made something of a study of it?  
A. Yes.

Q. Apart from your official visits on that occasion have you been there unofficially? A. Yes, of course.

Q. I think you had a holiday cottage? A. I have a holiday cottage in the area, that is true. 10

Q. Are you able to tell the Court whether the North Entrance Peninsula is at the present time used by school students as a field study area? A. Yes, school groups do visit the area from the neighbouring schools, schools like Wyong High School, The Entrance High School. I know these for sure; and some of the schools from the southern end of Newcastle come down to this particular site.

Q. Do you know about Gosford High School?  
A. I don't know of Gosford High School. I do know Erina High goes there. 20

Q. Erina High is in fact quite close to the town of Gosford? A. Yes, that is right.

Q. What is the scientific value in taking children to look at the North Entrance Peninsula?  
A. The major value of it is that there is what is known scientifically as a succession on the sand dune from the seashore through to what is called the climax vegetation which is close to the edge of Tuggerah Lakes. There are actually two forms of climaxes at present; one is a red gum - black butt association and the other is a rain forest association, and both of these are of interest; but what I would stress more than anything else is that the use of such a succession on a sand dune is extremely difficult to procure in the Sydney/Newcastle area. Now to give you an example on Thursday next I have a school going from Chatswood, not exactly to this area but to the Wamberal district. They are travelling something like 70 miles to see this. Wamberal is a sand dune succession but then we need more than one of these. If they don't go to Wamberal, the schools from Sydney have to go as far south as Gerrin-gong which is 70 miles south of Sydney and this is a long way to send children for this sort of thing. What I am concerned about is that something like 75% of the school children in New South Wales are located in the Newcastle/Sydney/Wollongong complex and therefore there is a great demand upon this. When I was a student we did our successional studies 30 40 50



at Cronulla but this is an example of what has happened. The entire area has been denuded.

Q. Assume that the North Entrance area were mined, the topsoil were replaced and there was some re-vegetation either by natural means or by planting? A. Yes.

Q. Would this restore the attractiveness or utility of the area from a scientific point of view?

A. I would say from an educational point of view it would severely detract from the value of the study of a natural succession. 10

Q. Would it be worth taking students to look at it? A. Well, it would have its value in that you could demonstrate to youngsters the application of the knowledge of the control of sand dunes, but from the point of view of an intrinsic study of the succession on a sand dune, it would not.

Q. I think you have mentioned the rain forest at North Entrance? A. Yes. 20

Q. Is the rain forest of value for educational purposes at the present time? A. I believe it is, yes.

Q. I think you take the view that the road adds damage to rain forest to some extent? A. Yes, it is unfortunate that the equilibrium which is developed on a sand dune is so delicate that any interference has considerable effect, but because the presence of rain forests in a sand dune succession is so rare, it is of value to have this anyway what we have got there. 30

Q. How rare are rain forests; for instance where would be the rain forest closest to Sydney which you would regard as comparable to the North Entrance?

A. This would be very difficult to find, what you might call the literal rain forest, a rain forest which is associated with a sand dune. There are other rain forests. For instance there is a rain forest at Minnamurra Falls.

Q. Near Kiama? A. Near Kiama, yes; and then there are the extensive rain forests of the Barrington Tops but these are not part of the same sort of succession. 40

Q. They are all inland, of course? A. Yes.

Q. What about a literal rain forest; where is the next closest? A. It is very difficult to find

one. There are little remnants at odd spots but there are none that I know of that are so well developed as they are on the sand dunes at Norah Head.

Q. Is there any possibility in your opinion of restoring the rain forest after mining? A. I would say not.

Q. Why is that? A. I would say that the rain forests on the sand dunes then developed under climatic conditions that no longer exist and they are only maintained because the rain forests themselves have developed what are known as micro-climatics and are re-cycling energy in a situation so it is important to maintain the status quo. 10

Q. This is associated with the shading of the surface of the ground? A. Development of canopy is extremely important.

Q. Once you take that away there is a problem to restore it? A. Yes. 20

HIS HONOUR: Q. No doubt there is bird life there; is there other fauna in the area? A. It depends what you are thinking of in terms of fauna. If you mean large mammals like kangaroos, I think the day for those has long since passed but there would certainly be an associated fauna and I was talking I think in terms of invertebrates as well as vertebrates, and whilst there is not a great demand upon high schools or upon school children to study these specifically, the whole environment exists because of this association. 30

MR. WILCOX: Q. Do you know anything about the existence of some fairly small marsupials in the North Entrance area? A. I don't know a great deal about them. I have never collected there but I would contend that there would be possums and this sort of thing, small ground mammals.

Q. I suppose to destroy a habitat by mining you must expect some loss? A. You will lose them, there is not any doubt about that. This is probably the greatest difficulty that the miner faces in his rehabilitation. He can control the sand dune but in the interim period between the time that he destroyed the vegetation and the time that he gets something else to grow on it, there can be a complete abandonment of that area by fauna. Now some of this of course that has power to come back will come back like birds, but it would be extremely difficult for the ground mammal, especially in a case like 40

A. Strong, x

the North Entrance that is so isolated and surrounded by developments.

CROSS-EXAMINATION:

MR. MILNE: Q. Mr. Strong, have there been any investigations or studies carried out between the relationships between beach sand mining and parks, national parks, that you are aware of? A. I am not quite clear what you mean by this. Do you mean studies of what should be set aside as parks, do you? 10

Q. Yes? A. Yes, I presume you refer to the Sim Committee report of which I was a member.

Q. The Sim Committee of course did not regard this area as being -? A. I'm sorry, the Sim Committee was actually charged with the task of determining the situation for Newcastle North-west.

Q. But the Sim Committee did look at this area? A. The Sim Committee had it on its agenda on one day and it was decided that since this was south of Newcastle it was of no concern. 20

Q. I am putting it fairly by saying that the Sim Committee looked at it and did nothing about it? A. That would be true.

Q. That would be correct, wouldn't it? A. That would be true because of its charter.

HIS HONOUR: It did not look at it, because it was south of Newcastle and its charter was north of Newcastle.

MR. MILNE: Q. Why did the Sim Committee have a look at it at all? A. I'm not sure of this - you would have to speak to Mr. Sim - I wasn't chairman but I understand that representations were made to Mr. Sim on the basis that the committee should look at it but it was rejected on the basis which I have said. 30

Q. It was -? A. Rejected on the basis which I have indicated, the fact that the committee considered its task was to consider the areas north of Newcastle. 40

Q. And did it consider, that you are aware of, any areas other than areas north of Newcastle? A. Not to my mind. I can't recall any.

(Witness retired)

A. Strong, x, xx,  
236. ret'd

ROBERT THOMAS KEATING  
Sworn, examined as under:

MR. WILCOX: Q. What is your name? A. Robert Thomas Keating.

Q. Where do you live? A. Killarney Vale.

Q. Whereabouts is that? A. Very close to The Entrance.

Q. I think you are an engineering assistant employed by the Wyong Shire Council? A. Yes, that is right.

10

Q. Were you asked to accompany a Mr. Madden to the North Entrance area when certain photographs were taken? A. Yes.

Q. And I think that occurred in mid-January 1972? A. That is right.

Q. And was the purpose of your accompanying him to first of all locate by survey pegs the boundaries of various mining leases and then identify those to Mr. Madden? A. Identify, yes, that is right, identify them.

20

Q. I think you were present when a number of coloured photographs were taken, were you not?  
A. Yes.

Q. And did you also see a composite black and white photograph which is this document? A. Yes.

Q. You have seen that since that day? A. Yes.

Q. I show you that document. Do you see on it certain yellow lines which purport to show the boundaries between the various mining leases? A. Yes.

Q. Can you tell us how it was that you identified on the ground the boundaries of the mining leases?

30

MR. MILNE: No dispute on that aspect. I will concede that the yellow line substantially represents the boundaries.

HIS HONOUR: Q. You did that from some physical features on the photograph? A. Yes, there are indications on the bitumen road of the boundaries of the mining leases.

MR. WILCOX: Q. And you can pick those up from the aerial photograph? A. Yes.

40

Q. And in addition to that there is a red line which shows the outline, or purports to show the outline of the angophera forest? A. Yes.

Q. You went over the area with Mr. Madden on foot, I think? A. Yes.

Q. This is an approximate line but are you able to express an opinion to the court whether that is a reasonably accurate estimate of the boundary of the angophera forest? A. Yes.

10

Q. You see another line which I think is in green, purporting to show the rain forest outline? A. Yes.

Q. Does that accord with your recollection from your inspection as to the rain forest outline? A. Yes.

Q. In addition you see various labels which show the dredge paths as they have been in the past. Just looking at the aerial photograph and comparing it with what you saw on the ground, are you able to tell the Court whether those labels appear to you to be accurate? A. I'm not very familiar with the exact paths of the dredges in the past.

20

HIS HONOUR: Q. The exact paths; you said you were not very familiar with the paths? A. With the paths of the dredge in the past but these, to my knowledge, these are correct, yes.

MR. WILCOX: Q. They appear to be correct? A. Yes.

Q. From what you saw, do they? A. Yes.

HIS HONOUR: When was it taken?

30

MR. WILCOX: I think it is dated 11th January.

Q. Would that be about the time it was taken, Mr. Keating? A. I don't know, I'm sorry, I don't know the date the photograph was taken.

Q. Was it January this year? A. Yes.

(Aerial photograph as at January 1972 admitted without objection and marked Exhibit "p").

HIS HONOUR: Q. This land has been subdivided; what are these roads that go through there?

40

MR. WILCOX: I thought they were access for dredges, access paths to the dredge area.

Q. I don't know whether you can help us on that, Mr. Keating. Do you know the roads to which his Honour refers?

HIS HONOUR: This is the area (indicating).

WITNESS: Yes, they are not roads, your Honour. They are tracks.

Q. Cleared areas? A. Yes, just tracks.

Q. You do not know how they came to be there?

A. No, I don't.

10

MR. WILCOX: Q. Do you know how recently those tracks were formed? A. No, I'm sorry, I don't.

Q. Now Mr. Keating, I think the photographs which were taken are contained in this photo album and the photographs to which you refer are those appearing other than the ones on the last three pages in the album, is that right? A. Yes, that is right.

(Album of photographs admitted and marked Exhibit "Q").

20

MR. WILCOX: The last three photographs are some general photographs of the district showing the sort of tourist and recreational amenity which it has.

MR. WILCOX: Q. Just one question if I can ask Mr. Keating: opposite each of the photographs there is a small map of the area which shows the approximate position where the photograph was taken. I think you have been through the album and you tell the Court that, so far as your recollection goes, the small map accurately shows the position of the photo? A. Yes, that is correct.

30

CROSS-EXAMINATION:

MR. MILNE: Q. (Calls for Exhibit "P"). Mr. Keating, you told his Honour that you walked through the area and you delineated on this aerial photograph in red the boundary of the angophera forest? A. As much as I know.

Q. I beg your pardon? A. As much as I know angophera, yes.

40

Q. I'm sorry, I cannot hear you. A. As well as I can, yes, yes.

Q. When you used the expression "forest" does that mean something to you, the trees have got to be close together? A. No, no.

Q. It doesn't mean that? A. No, I'm not an expert in this field at all.

Q. I want to suggest to you that the area shown as the angophera forest on that aerial photograph (approaches witness) is much bigger than any area which you could describe really as a forest at all? 10  
A. We only walked in through to the top of the ridge to take a couple of photographs from the top of the ridge in the particular mining lease 51.

HIS HONOUR: Q. What were you attempting to do there when you were marking those boundaries; whatever the word "forest" technically means, and it has a technical meaning, what were you using it as, what were you attempting to describe when you put that red line around it? A. I didn't put the red line around here, your Honour. 20

Q. You said it was the approximate position of the forest; did you have any particular idea in mind when you said that? A. No, only to indicate which particular mining lease the photographs were taken, and that is really all I did do.

MR. MILNE: Q. But Mr. Keating, I do understand you to say, don't you, that that red line represents the area of what you said in your evidence was the angophera forest? A. As much as I know about it, as I can recall, as I know of. 30

Q. Can you tell me is all the area inside of that thickly covered with trees or is some of it sparsely covered? A. It is fairly thick. It varies. Sparsely covered more, a little bit less thick around towards the lake but generally -

HIS HONOUR: Q. You said it is sparsely covered towards the lake? A. A little bit less thick around towards the lake but it is generally much the same.

MR. MILNE: Q. Isn't this the true position, Mr. Keating, that somebody told you that was the angophera forest? A. No. 40

Q. Isn't it? A. No.

Q. Who put the red line there? A. I don't know.

Q. You don't know? A. No.

Q. (Calls for Exhibit 17 and approaches witness). I show you a plan which is part of Exhibit 17 and it is annexed to a letter of 5th December 1969. First of all have you ever seen that plan before with those red markings on it? A. No.

Q. You have never seen it? A. Not this one.

Q. Does the large red hatched area in towards the centre of the plan represent the more thickly wooded part of the area. If you can't say -? 10

A. Yes, I think, I'm not sure enough.

HIS HONOUR: Q. I cannot hear you. A. I'm not sure enough.

MR. MILNE: Q. I suppose you do know what an angophera tree is, do you? A. No, I don't.

Q. You don't? A. No.

RE-EXAMINATION:

MR. WILCOX: Q. (Calls for Exhibit "Q" and approaches witness). Mr. Keating, I show you a page of the photo album which refers to the label "Views from ridge, southern fringe of red gum forest". 20  
You know these trees that appear in that photograph?  
A. Yes.

Q. What do you know them as? A. Red gums.

Q. How does the position of the red gums tally with the position of what is called the angophera forest in the red line on the aerial photograph?  
A. How does it?

Q. Did you see red gums on the Peninsula? 30  
A. Yes.

Q. Now whether you know what an angophera is or not, can you tell me whether there were many red gums there? A. Yes.

Q. Whereabouts are they in relation to the red line that is on the aerial photograph? A. They are just to the north and on the western side.

Q. Just to the north, the north and western side of what? A. Of the red line as I recall, and some of the red gums are in the red hatched area too.

Q. Some of the red gums are in the red hatched area as well? A. Yes. 40

(Witness retired).



HUGH MALCOLM CHALMERS  
Sworn, examined as under:

MR. WILCOX: Q. What is your full name? A. Hugh Malcolm Chalmers.

Q. Where do you live? A. I live at Tumbi Umbi.

Q. Whereabouts is that? A. Tumbi Umbi is two miles from The Entrance.

Q. It is south of the village of The Entrance, is it? A. It is going on the west, towards Wyong from The Entrance.

10

Q. Your occupation is that of a pharmacist?  
A. Yes.

Q. I think you have a shop in the village of The Entrance? A. Yes.

Q. You have had that shop for quite a number of years? A. Yes indeed. The pharmacy was originally established some thirty-odd years ago by my father and I have subsequently carried on.

Q. Have you lived in the area near The Entrance all of your life? A. Yes, apart from the time, a few years I was at university and a short period overseas.

20

Q. Do you know the north entrance peninsula?  
A. Yes indeed.

Q. Do you know an angophera forest on the peninsula? A. Yes.

Q. (Shown Exhibit "P"). Would you look at that photograph and tell the Court whereabouts, so far as you can recognise it, the angophera forest is to be found? A. I think the angophera forest would be very closely approximate to the area in red on this aerial map here, which is mainly west of the Wilfred Barrack Drive and east of the Wilfred Barrack Drive.

30

Q. Have you been on foot through the angophera forest? A. Yes.

Q. On many occasions? A. Yes indeed. As a young child I, with other friends, explored the area for many years.

Q. Have you been there in recent times? A. Yes.

Q. What about through the rain forest? A. Yes, I have been through the rain forest a few times recently, and over a period of many years.

40

Q. As a local resident and one who knows the area, do you have any view about the attractiveness of the peninsula and the timbered areas? A. Well, looking at the whole area, it is the only major portion of the district that is not subdivided, and it appears to be the only major area along the lake shores of Tuggerah Lake that will not be eventually developed.

10

Q. What do you say about the general attractiveness of the forest area? A. This is an extremely beautiful area. Many people get boats on the lake and go and picnic on the lakeside of the peninsula, as well as in the area itself, and certainly it appears to be quite attractive.

Q. Can you tell the Court anything about the growth or otherwise of tourism and recreational activity in the area? A. In 1970-71 over the Christmas, New Year holiday period the estimation by the Central Coast Tourist Authority was that \$3 million would have been the figure of money spent by tourists over that small period of time, with approximately a little over 250,000 tourists over that small time.

20

Q. That is within the central coast generally?  
A. That is within the central coast generally.

HIS HONOUR: Q. What do you call the central coast?  
A. I am sorry, your Honour, the central coast would be the Gosford Shire and the Wyong Shire and the Central Coast Tourist Authority is jointly sponsored by the Gosford and Wyong Shire Councils.

30

MR. WILCOX: Q. That was only the summer holidays?  
A. Yes, that was only the summer holidays. The figure for 1971 from the Tourist Authority is \$16 million worth of tourist spending in the area and over 1 million tourists through the central coast area.

Q. That is in a full year? A. Yes, that is in a full year.

40

Q. Do you notice anything in your own pharmacy about the peak period for tourists in the area of The Entrance? A. Yes. On checking figures of cash sales - this is cash sales only, where you can get an indication - approximately one-third of my total annual cash sales were in a period of two months, of December and January.

Q. One-third of the annual takings? A. One-third of my annual cash sales.

Q. Are there many persons to be found in and around The Entrance and on the lakes and the beaches at that time? A. Oh indeed, yes. It is the peak period, and there are certainly many, many people.

Q. Can you say whether this has grown over the past ten years? A. Oh indeed, it has grown. The kind of accommodation available for tourists has doubled, and with good and better classes of accommodation being provided, and you will find all the businesses in The Entrance area suffer the same sort of increase. 10

HIS HONOUR: Q. Enjoy you mean? A. I am sorry, enjoy. Suffer in the wintertime, your Honour.

MR. WILCOX: Q. I think since September of last year you have been a member of the Wyong Shire Council? A. Yes.

Q. You were elected at the triennial elections held in the middle of last September? A. Yes.

Q. Immediately following your joining the Council was there an election for President, at which Mr. Hinds was elected as President? A. Yes. 20

Q. I think he held office for a period of some two months? A. Yes.

Q. In which there was a re-declaration of the poll in the riding of which he was a representative, as a result of which other persons were declared in lieu of the five members who had been sitting for two months? A. Yes.

HIS HONOUR: Q. How many members of the Council are there? A. There are ten altogether, five in A Riding and five in B Riding, and my area is B Riding. A Riding where Mr. Hinds came from, he was subsequently declared out, and another group declared in his place. 30

Q. That was applicable to all the five A Riding people? A. All the five A Riding candidates, not the B Riding ones. There was no question of that.

MR. WILCOX: Q. In respect of the A Riding candidates, five new representatives came on the Council? A. Yes. 40

Q. I think at the present time there is some litigation pending to determine which of the two groups of five was correctly elected? A. Yes.

Q. That does not affect your position? A. No, that does not affect my position.

Q. You are in the other riding? A. Yes.

Q. Following the disqualification, if that is the right word, of Mr. Hinds, did the Council then elect a new President? A. Yes.

Q. Were you elected to that office? A. Yes.

Q. That was about the middle of October of last year? A. Yes, that would be right.

10

Q. You have held the office since that time?  
A. I have, yes.

Q. Has the issue of sand mining on the north entrance peninsula been a matter which has occupied a considerable amount of the Council's time since you have been a member of it? A. Yes, it has occupied a lot of the Council's time in attending to telegrams and letters from Associated Minerals, and Council did appoint a special sub-committee to investigate the situation, and all they have tried to do is to get to a stage where they can investigate the situation properly themselves.

20

Q. This is the Council? A. This is the Council.

Q. Are there many new members on the current Council as distinct from the people who were there previously? A. Yes. There are at this stage no councillors on the Council who served previously, and at the time of the September elections Mr. Hinds, the previous President, and one other member of his team were the only two councillors with any previous experience.

30

Q. You as President have spent some time on this matter, have you? A. Yes indeed.

Q. Have special meetings been held by the Council to consider the various letters and otherwise that have been received from Associated Minerals? A. Yes. We have had two special Council meetings called at weekends. The initial one was to discuss the rather lengthy telegram sent to the Council by the company. Council acted as quickly as it could, called an urgent Council meeting to discuss what they would do.

40

HIS HONOUR: Q. When was that? A. That was after the telegram regarding the permissive occupancy.

Q. Do you know which month it was? A. This

would be in October, and subsequently we held another special Council meeting after the meeting with the Minister for Mines, which we held I think on November 16th, I am not quite sure of the date. Those two special meetings were called at very short notice, and if Councillors did not turn up they were liable for a \$100 fine for that, so they have been trying to resolve the situation before anything bad came of it.

10

MR. WILCOX: Q. Have there been public meetings in the district in which this matter has been discussed?

A. There have been public meetings in the district and a lot of people in the area asked the Council whether they were prepared to do anything about it, and the Council said that they would call a public meeting - (Objected to).

HIS HONOUR: Q. The Council considered the matter?

A. Yes, the Council considered the matter, and upon request from people in the area Council sponsored the meeting of an organisation which called itself The Save the Red Gums Association, in exactly the same way as the week previously we had called a meeting of a community service organisation and Meals On Wheels, and this sort of thing. There was sufficient interest in the community, and we felt obliged to call a public meeting.

20

Q. You did sponsor the calling of a meeting?

A. Yes.

MR. WILCOX: Q. Did any specific number of the public turn up at these meetings? A. I think there were about 130 people at that particular meeting.

30

Q. In your time on Council at any rate, no development application in respect of the North Entrance Peninsula has been considered by Council?

A. No, no development application has been considered by Council.

Q. So far as the issue of whether there ought to be mining on the peninsula is concerned or otherwise, do you have any personal view as a member of the Council as to the sort of consideration that would need to be given before a decision was made? A. Well, I have thought about this a great deal and I do not think that there is sufficient evidence in front of me for me to personally draw conclusions, nor has the Council, who could be the body I believe to decide what is going on, have they had the opportunity or the information placed in front of them to decide whether mining should continue or not. The initial special committee set up by Council was set

40

50

up because of tree preservation orders having been put on the peninsula. I was new on the Council and so were the others, and we wanted to know exactly what the legal situation was, and what Council was obliged to do.

Q. Would you personally desire to see and consider a report on environmental aspects of sand mining from qualified people before making a decision? A. Indeed, yes.

10

Q. Have you had any discussions with any representatives of Associated Minerals regarding the provision to Council of any report that the company holds? A. The only opportunity that the present Council has had to talk with representatives of the company was at the meeting that was held with the Minister for Mines, at which Mr. McKeller and Mr. Surman I think represented the company, Cr. Hinds, myself and another councillor represented the Council, and the representatives of so-called conservationist groups and unionists at the same time. At that meeting I think we did ask Mr. McKeller or the Company representative if we could see their Isec report from Professor Munro, to help us make up our minds.

20

Q. The report to which you refer is one by a group called the International Conservation Consortium, I think? A. Yes.

Q. A group of university professors were involved? A. Yes, headed by Professor Munro. I think that is the one, yes.

30

Q. I think you came in contact with them when they were in the district; they had made some contact with the Council? A. Yes, they had.

Q. Did you ask Mr. McKeller to let the Council have a copy of that report? A. Yes, I did.

Q. What reply did you get? A. I think the answer was No.

Q. Have you ever received such a report? A. No.

Q. From the company? A. No.

40

Q. Have either you or the Council to your knowledge ever received from the company a copy of that report? A. Not to my knowledge.

Q. The document itself you saw for the first time the other day in Court? A. Yes.

Q. When it was produced by the defendant?

A. No. The document I did see, and I believe it to be the same one, that Mr. McKeller did have it at the meeting with the Minister for Mines. I think it was the same sort of brown cover. I can only assume that that was the same one, but in detail that was the only time I saw it, in Court the other day.

Q. You have not seen it beneath the brown cover? 10

A. No.

Q. In the year 1961 you were living in The Entrance, were you? A. Yes.

Q. Was there a newspaper then published and circulating within the Wyong Shire called the Wyong And Tuggerah Lakes News? A. Yes.

Q. Was that of general circulation within the Shire so far as you are aware? A. Yes.

(Newspapers, being Wyong and Tuggerah Lakes News of January 18th, 1961, tendered and marked Exhibit "R"). 20

(Copy letter dated 25th February, 1972, from Shire Clerk to instructing solicitor for Mr. Wilcox tendered and marked Exhibit "S").

Q. Are you aware of a report of the National Trust of Australia dealing with the requirements for conservation of natural areas, scenic preservation and recreation within the vicinity of Sydney up to the year 2000? A. Yes.

Q. And in particular of a proposal in respect of the North Entrance Peninsula? A. Yes. 30

Q. So far as your own thinking is concerned, tell the Court whether from your knowledge of the area you see any merit in attempting to preserve either the whole or a substantial portion of the peninsula as a park in its natural condition and under fairly careful control. A. The whole peninsula is, viewed in the light of the Wyong Shire Planning Scheme, the only major portion of land zoned for open space recreation which seems ideally suited for it, being between the areas of Toukley and The Entrance, with the major traffic areas of the shire, and I would see great merit in it being controlled properly and administered as a park, yes. 40

(Report of the National Trust of Australia tendered; objected to; rejected).

CROSS-EXAMINATION:

MR. MILNE: Q. I suppose you have made yourself familiar with the records of Council concerning the mining operations my client company has, for the purposes of this case? A. I have been through them quite a few times, but I do not claim to know anything more than just a running knowledge of the things.

Q. See if you disagree with this proposition, that certainly for a period of years your Council actively encouraged mining operations in your Shire?— 10

HIS HONOUR: You are not limiting that question to any particular piece of land?

MR. MILNE: No. A. Actively encouraged?

HIS HONOUR: Q. Not necessarily this part of the Shire, but just the Shire generally? A. The immediate previous Council, I do not think would fit that category as they were the ones who originally started passing preservation orders. 20

Q. What do you mean by the previous Council?  
A. The Council that was in three years previous to the elections in September 1971. Previous to that my observation would be one of passive resistance, if that is the right terminology.

MR. MILNE: Q. Passive resistance prior to about 1968? A. Yes, well, there could be various reasons for that.

Q. Yes, I know there may be reasons, but that is how you would describe it, would you? A. Yes. 30

Q. Pre-1968 passive resistance, post-1968 some deal of opposition? A. Yes, there was some deal of opposition, obviously in recent years. There might have been some other circumstances that might have led the company to believe that it was actively encouraging the mining.

Q. You of course know, don't you, that in respect of the four areas that are involved here, Council - the then Council ... A. In what sense? 40

HIS HONOUR: Wait until the question is asked.

MR. MILNE: Q. The then Council was asked in express terms whether it objected to the grant of leases, mining leases? A. Yes.



Q. You know that, don't you? A. Yes.

Q. And you know that on each occasion Council said that they raised no objection? A. Yes.

Q. You know that, don't you, and you know that never ever since that happened have they ever said to the mining company, "Look, we are sorry that we ever took that attitude"? A. Yes, Council has not been in the habit of going to the mining company, nor has the mining company been in the habit of going to the Council, I think. 10

Q. But you, for example, have never asked the Minister to forfeit the leases? A. No. I cannot speak entirely for all the councillors.

Q. But so far as your study of the documents goes? A. Yes.

Q. It shows that no - certainly no step was ever taken prior to 1967? A. No.

Q. Was it? A. No.

Q. And apart from the passing of the tree preservation orders, no positive step has ever been taken until these proceedings were commenced? 20  
A. The tree preservation orders that were passed by the previous Council.

Q. Apart from the tree preservation orders?  
A. Yes - I am sorry.

Q. No positive step at all has been taken until the institution of this suit? A. No.

Q. And the fact is of course you yourself have known to your own personal knowledge that mining was going on in Munmorah for I suppose the last ten or fifteen years? A. Yes. 30

Q. You knew that, didn't you? A. Yes.

Q. And you knew at all times since the mid-fifties or thereabouts that my client company had the four leases the subject of this dispute? A. No.

Q. When did you first find out? A. When I first joined the Council.

Q. That was in September 1971? A. That is right. 40

Q. So do you tell his Honour that until September 1971 you were unaware of the fact that my client had these four leases? A. Yes.

HIS HONOUR: I think you mean your clients, in the plural.

MR. MILNE: Q. Yes, you were unaware of the fact that my client companies had these four leases?

A. I knew of the existence of a company called Wyong Minerals, and I knew of the existence of a company called Wyong Alluvials. I knew that those companies had been operating for some time. I had no knowledge of your other company, Associated Minerals, being involved. 10

Q. In any event you certainly knew prior to your going to the Council that at least one of these four leases was being mined? A. Yes.

Q. And you had known that as of September 1971? A. Yes.

Q. For well over twelve months? A. Yes, I had known that over twelve months. 20

Q. That is correct, isn't it? A. Yes, but I was in no position to do anything about it.

HIS HONOUR: Q. But you did know it personally? A. That is right.

MR. MILNE: Q. I suppose that from your discussions with your Council's officers and from reading of the correspondence, it must be pretty clear, isn't it, that the previous Council also must have been aware of that? A. Yes indeed. 30

Q. There could be no secret about it, could there? A. No.

Q. Because you knew in December or January I think it was, of 1969, my client told the Council what it was going to do? A. I have seen evidence of reports in the Council's files.

Q. You have seen letters, haven't you? A. Yes.

Q. Where the Council said in effect to my client "Would you please tell us what you are going to do"? A. Yes. 40

Q. And we wrote back and gave a letter and a plan, and that was all in Council's records?

A. Yes, that was in Council's records. At the same ...

HIS HONOUR: Q. What did you say? A. I was about to say that the same Council would have known that - the Council that would have passed the initial tree preservation order.

Q. I do not really follow that. When do you say the initial tree preservation order was made?

A. It was passed in early 1971, so the Council that Mr. Milne refers to would have been the same Council at that time as passed the original tree preservation order in 1969. 10

MR. MILNE: Q. You draw a distinction between your Council and persons who constituted the Council before you, do you? A. I do, in so far as their experience and knowledge in this matter, yes.

Q. But there could be no doubt from your reading of the files of the correspondence and what you know about it, that the Council, whoever it may have consisted of, had known when you came to power, for more than twelve months that mining operations were in fact going on? A. Yes. 20

Q. And there is no doubt that that Council, and indeed all the servants of the Council that had anything to do with it, were fully aware of what the proposals for the company were?-

HIS HONOUR: You mean in relation to mining that area?

MR. MILNE: Yes, in relation to mining that area? A. Yes.

Q. That is correct, isn't it? A. Yes. 30

HIS HONOUR: May I say I do not know what reliance you are placing on these Mr. Milne, but there are two companies. There is one area being mined at one stage, and another area altogether. You are talking about the three southern leases and the operations of the second defendant?

MR. MILNE: Q. I am confining what I say to you to the four Tuggerah leases? A. Yes.

Q. You understand that three of those are held by a company we call the Wyong Company, the northernmost one is held by a company called Associated Minerals; you understand that? A. Yes, I do. 40

Q. What I put to you is that although the Council knew in June 1969 that mining operations had commenced on the southernmost lease, there was

nothing at all done about it? A. Nothing to prevent mining, no - at that stage, no.

Q. Isn't this fair enough - will you see if you can agree or disagree with this, that you yourself at all times prior to getting legal advice for this suit, took the view that no consent was necessary?

A. I did not take any view at all. That was why I got legal advice. I didn't know what the situation was, and neither of the other councillors serving at the time knew their exact situation.

10

HIS HONOUR: Q. You are talking about the Council after September 1971? A. Yes indeed.

MR. MILNE: Q. Of course you have no idea of the view of the Council that was there before you?

A. The only way I can determine a view of that was that that was the Council that passed the initial tree preservation order on the peninsula.

Q. But that the tree preservation order was only passed, was it not, for the purpose of staying the proceedings until the full intentions of the company were known? (Objected to).

20

HIS HONOUR: I suppose the question would be, does he know from his investigation of the records that that was so.

MR. MILNE: Q. Do you know that from your investigation of the records? A. Will you repeat the question please?

Q. That it was passed, the one in September 1971?

30

A. I think there was an earlier one than that. There were two before that.

Q. I will come to the July one in a moment, but you have read this resolution as of 9th September, 1971, resolved that a tree preservation order be placed on the mining company's leases at The Entrance North until the Council becomes aware of the company's intention? A. Yes, I have seen that one. That was passed immediately before I came on the Council.

40

Q. So your understanding of it simply was that it was a resolution passed by the Council covering only my client's leases to stop them mining until they became aware of the company's intentions?

A. Yes, that is exactly the wording of it.

Q. And the first one, of course, I suggest to you was 22nd July 1971 and that only related to

operations at this meeting when the last tree preservation order was passed, wasn't there? A. I assume - well, no, I can't recall what was discussed at the meeting. I am sorry.

Q. Didn't you say to my learned friend a moment ago that it was to stop mining, to give the new Council an opportunity to assess the position for themselves? A. I felt Council had a right to discuss the situation, and they still have that right.

10

Q. But do you agree that its purpose was that -

HIS HONOUR: The purpose of the last tree preservation order?

MR. MILNE: Q. That its purpose was to stop mining, to give the new Council an opportunity to assess the position for themselves? A. That may have been one of the results.

Q. That is what you said in evidence-in-chief?  
A. That was one of the results - that was its sole intention?

20

Q. It was one of the reasons? A. Yes.

Q. You were using the tree preservation order for the purpose of stopping the mining, to give the Council an opportunity to assess the position for themselves? -

MR. WILCOX: I wonder if the witness is being asked about what went through his mind at the time, or whether my friend is inviting an expression of what went through other councillors' minds.

MR. MILNE: Q. You did say to my learned friend a short while ago when giving evidence, that it was to stop the mining to give the new Council an opportunity to assess the position for themselves, didn't you? -

30

HIS HONOUR: Q. You are only being asked if that is what you said here. A. Yes.

MR. MILNE: Q. And that was your understanding of it, wasn't it? A. That was one of the reasons. That was my understanding of it, yes.

Q. Prior to passing it of course you did not tell either of my two client companies that you were going to Sydney? A. No, I did not.

40

Q. And you would agree that if it is a valid

order, it means an enormous loss to them? A. That is no consideration -

HIS HONOUR: Is not that a question of law?

MR. MILNE: Q. You believe that there are very valuable minerals there? A. I have been told there are very valuable minerals there.

Q. And if the tree preservation order - if they can't knock down trees, you will agree that they can't mine? A. Yes, that is a natural assumption. 10

RE-EXAMINATION:

MR. WILCOX: Q. The December resolution about which my friend has been asking you refers to all lands within the Shire, does it not? A. Yes, it does.

Q. So far as you are aware, did the Council give notification to other ratepayers within the Shire of the intention to pass that resolution? A. No, the Council passed the resolution without notice to anyone.

(Planning Scheme maps tendered and marked Exhibit "T"). 20

JOHN STEINKE

Sworn, examined, deposed:

TO MR. WILCOX: My full name is John Steinke. I live at 53 Schubert Crescent, Keiraville near Wollongong.

Q. You are a senior lecturer in economics at the Wollongong University College? A. That is correct.

Q. You hold a degree as Bachelor of Economics and Master of Economics from the University of California at Berkeley? A. That is correct. 30

Q. I think you came to Australia some eight years ago and you have been on the staff at the University College since that time? A. That is correct.

Q. The university college at Wollongong is affiliated to the University of New South Wales and students take their degree from the University of New South Wales? A. That is correct. 40

Q. I think amongst the courses with which you are concerned is a course in Regional Economics for third year students seeking the degree of Bachelor of Economics? A. That is correct.

Q. Is Regional Economics the study of the economics of a particular region with reference to its population trends, its employment trends, its sources of growth, and its limitation of growth?

A. Yes, there would be more to it than that but ...

10

HIS HONOUR: Q. It includes those matters?

A. Yes, it includes those matters.

MR. WILCOX: Q. Before you came to Australia you were employed by agencies of the United States Government as a regional economist? A. That is true.

Q. Was your particular task to assess the likely growth pattern of a region in order to advise electricity supply authorities of the United States Government on future requirements? A. Yes.

20

Q. And that involved you looking at population trends, the likely sources of new employment, industrial growth and the like? A. That is correct.

Q. I think since you have been in Australia you have been consulted from time to time by the New South Wales Department of Decentralisation and Development in relation to similar studies of areas within this State? A. Yes, broadly that is correct. What I have is a continuing relationship with the Department, in that I am Director or presently co-Director of research of one of their subsidiary bodies, the Illawarra Regional Development Committee. I normally hold the same position with another of their subsidiary bodies, in addition to which I had prepared some studies directly for the Department of Decentralisation itself.

30

Q. I think you have had various papers published by that Department or by committees sponsored by the Department? A. That is correct. I brought one sample with me, if that is necessary.

40

Q. Thank you. I think you have made some study of the economic trends in the central coast area of New South Wales? A. That is correct.

Q. By central coast do you mean particularly the Shires of Gosford and Wyong? A. Not particularly the Shire of Gosford. In particular I did

look at the Shire of Wyong. I am passingly familiar with the Shire of Gosford, but I would not say I had made a particular study of Gosford.

Q. I think you have looked at the population of Wyong Shire as disclosed in the census taken as at 30th June, 1966, and compared that with the population disclosed at the census taken as at 30th June, 1971? A. That is correct.

Q. Before you go to the figures, the situation with the census is that it actually records the persons lodged overnight on the particular day; is that right? A. That is correct. 10

Q. So if you get an area where there is a big seasonal population, the population shown would be influenced by that seasonal factor? A. Yes, the population shown, and their occupations of course, would be influenced by the seasonal factor.

Q. In the 1966 census was the figure for Wyong 24,646 persons? A. That is correct. 20

Q. Did that increase to 32,867 by 1971? A. That is correct.

Q. A growth of approximately thirty-three per cent. in five years? A. That is correct.

Q. Pausing there, have you compared that growth rate with other areas and are you able to say that is the highest rate of growth in the State for any Local Government area outside the Sydney metropolitan area? A. Oh, that would not be quite accurate. It would be the highest rate of growth of any Local Government area outside of the metropolitan areas, but when I say metropolitan I would include not only Sydney metropolitan but Wollongong metropolitan. For example, in any big metropolitan area you have very rapidly-growing bedroom suburbs as, for example, Wollongong has a bedroom suburb of Shellharbour, which has virtually no industry and which would have a higher rate of growth than, say, Wyong. But outside the metropolitan districts, Wyong Shire would have the most rapid rate of growth. 30 40

Q. How did it compare with the Newcastle areas?  
A. Well, I was glancing over the 1971 census data this morning. I think there is possibly one portion of the Newcastle metropolitan region which is growing more rapidly than Wyong, but the Newcastle region as a whole, the metropolitan area as a whole, the growth rate would only be a small fraction of that of Wyong.



Q. Is Wyong Shire higher than Gosford? A. Yes, slightly.

Q. But Gosford itself has a very strong rate of growth? A. That is correct.

Q. Have you attempted to ascertain the number of wage earners within the Shire of Wyong, as taken from census figures, and to ascertain what proportion of them have jobs in the mining or quarrying industries? A. Yes, I have.

10

Q. Are those wage earners figures for the 1971 census yet available to you? A. No, they are not.

Q. You have looked at the 1966 figures I think, have you? A. Yes, and 1961 and 1954.

Q. Does the Commonwealth Statistician giving out the census figures break up jobs into various categories, one of which is simply called Mining and Quarrying? A. Yes, that is correct.

Q. The total number of wage earners in Wyong Shire at the 1966 census was about 7,800; is that right? A. That is correct.

20

Q. And it had built up from 4,025 in the year 1954? A. Yes.

Q. To 5,688 in 1961? A. Yes, that is true.

Q. That is an increase of some 3,700 in twelve years, of which well over half was in the immediately preceding five years? A. Yes, that is correct.

Q. And judging by the population growth figures, are you able to express any view as to the likely rate in wage earning which would have been experienced up to the 1971 census? A. Well, I think it could be assumed that since the rate of the population increase has been actually increasing between each intra-censal period, it was more rapid from 1961 to 1971 than the previous five years, and more rapid during that five years than the previous - I think ordinarily it would be safe to assume that there is immediate direct correlation between employment and population growth, and that something similar would have been experienced so far as employment is concerned.

30

40

Q. In the 1966 census results, of that 7,800 jobs I think some 1,650 were in the category of Construction, which is really the building industry, is it? A. Yes, building and construction.

It is primarily the building industry.

Q. Under the category of Commerce there were 1,400 jobs? A. Yes.

Q. Does that include shops and hotels - perhaps not hotels? A. Not hotels, no.

Q. There is another category, Manufacturing, in which there were 950 employees? A. Yes.

Q. Primary Producing 869? A. Yes.

Q. The category Amusements, Hotels and Cafes, 576? A. That is correct. 10

Q. The mining and quarrying figure as at June 1966 I think was a total of 222 employees? A. Yes.

Q. That includes both male and female employees? A. Yes.

Q. I think you have in addition made some attempt to ascertain the number of persons employed in the sand mining industry as distinct from other mining and quarrying within the Shire, and have you a figure taken from a survey done in 1970 by Dr. Susan Bandwick? A. Yes. 20

Q. What is the figure indicated for the Shire at that time? A. The figure at that time was 122 employed in the sand mining industry, according to the Bandwick study.

Q. It would appear that if the rate of job growth has been continued on as it was prior to June 1966, there is an increase of something around 500 jobs per annum in the Shire - running at that rate in 1966; is that right? A. Yes, that would be approximately right. It can be one way or another, but it is somewhere around that magnitude. 30

Q. So in terms of employment of people in the sand mining industry, the total number of people employed in the Shire represents about three months population growth? A. That is correct, and the normal expansion of employment annually would be about four times the total employment in sand mining.

Q. I think you are aware of the Sydney Region Outline Plan published by the State Planning Authority? A. Yes. 40

Q. And that envisages the growth of Gosford

and Wyong by the year 2000 to accommodate half a million people? A. Yes, that is true.

Q. From your study of the area, can you tell the Court the likely source of increased population within the Wyong Shire? A. My opinion would be on the basis of my investigations, that by far the dominant source of growth of the Shire in the past has been the recreation industry, and that this continues to be true at the present time.

10

Q. Do you see any reason to indicate that it would be supplanted by anything else in the future?

A. No, I do not. The employment and manufacturing is, for example, very low by the standards of - in regard to the proportion of the total population employed in manufacturing State-wide, it is extremely low. The dynamic element in the Wyong economy is, I believe without any question, recreation, and barring some deliberate action on the part of the State Government to replace that with another source of growth, I would expect recreation to continue to be the dynamic element in the economy.

20

Q. Just one other matter - are there a disproportionately high number of elderly people in the Shire compared with the State average? A. Yes, although I am not able to give you detailed figures on this. I have looked briefly at the census data and I would say that the proportion is unusually high, but I cannot give you any detail on that.

Q. Does that seem to indicate that the Shire holds some attraction for retired people, and for people approaching retiring years? A. There is another source of evidence on that, which is perhaps more direct, and that is that any census - the statistician gives a breakdown of the composition of dwellings in each Local Government area, what type of dwellings they are; and if you go to the 1966 census you find that in Wyong Shire forty-three per cent. of all dwellings in the area were classified by the census as being unoccupied dwellings, and of those unoccupied dwellings something like eighty per cent. are further classified as holiday homes, weekenders and so on.

30

40

Q. That would be, unoccupied on the day the census papers were distributed? A. That is correct.

MR. MILNE: I have no questions to ask in cross-examination.

(Witness retired and excused).

(Case in Reply closed).

MR. MILNE: There is a matter that was raised - whether or not there was a dredge path plan other than for M.L. 44.

HIS HONOUR: There was an earlier one, but it had to be reconsidered.

MR. MILNE: That dredge path plan has not been tendered yet, so I tender that now.

(Dredge path plan for M.L. 42 and M.L. 48 tendered and marked Exhibit 30).

MR. MILNE: I have had prepared a composite of that one and M.L. 44 on a smaller scale, so that it is easier to look at. I tender that one. 10

(Composite dredge path plan tendered and marked Exhibit 31).

MR. MILNE: I think that leaves a gap of quite substantial areas other than detailed ones of those two.

HIS HONOUR: Yes, all the western part of M.L. 51 for example.

MR. MILNE: What has been attempted has been done over the weekend, to draw up what are described here as plan B, the undetailed areas being highly tentative. 20

(Tentative dredge path plan tendered and marked Exhibit 32).

MR. WILCOX: Could my friend make clear whether that is the company's tentative dredge path plan?

HIS HONOUR: I think that date November 1971 is the date on all these plans.

MR. MILNE: That plan was drawn over the weekend.

HIS HONOUR: What it is described as is Possible Extensions. 30

MR. MILNE: It may have some significance. There are all sorts of possibilities.

(Further hearing adjourned for a view of the area on Tuesday, 29th February, 1972, and hearing on Thursday, 2nd March, 1972.)

IN THE SUPREME COURT )  
                                  )  
OF NEW SOUTH WALES    )  
                                  )  
IN EQUITY                    )

No. 2083 of 1971

CORAM: HOPE J.  
TUESDAY 9TH MAY, 1972

WYONG SHIRE COUNCIL v. ASSOCIATED MINERALS  
CONSOLIDATED LIMITED & ANOR.

JUDGMENT

HIS HONOUR: In this suit the plaintiff seeks de-  
clarations that the use by the defendants of certain 10  
land within its area for the purpose of mining and  
for ancillary purposes without the prior consent of  
the plaintiff, and the ring-barking, cutting down,  
topping, lopping, removing, injuring or wilful des-  
truction of any of the trees on that land by the  
defendants without the prior consent of the plain-  
tiff, are and each of them is in breach of the pro-  
visions of the Shire of Wyong Planning Scheme Ordi-  
nance and illegal. The plaintiff also seeks injunc-  
tions to restrain the use of the land by the defen- 20  
dants for mining and mining purposes and the cutting  
down and destruction of trees on the land by the  
defendants, in each case without having obtained  
the prior consent thereto of the plaintiff.

The second defendant (Wyong Alluvials) is a  
subsidiary of another company called Wyong Minerals  
Limited. This company (Wyong Minerals) was a pub-  
lic company until some time in 1967 when the first  
defendant (Associated Minerals) acquired its issued

Reasons for Judgment of  
his Honour Mr. Justice  
Hope

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

share capital. Associated Minerals is itself a subsidiary of a company called Consolidated Goldfields of Australia Limited, which acquired a majority interest in its capital in 1961. Until the takeover in 1967, Wyong Minerals and Wyong Alluvials carried on their operations entirely independently of Associated Minerals, but at some time thereafter they became, at any rate in respect of the areas with which this suit is concerned, subject to the same management. 10

The land with which the suit is concerned is situated on a peninsula called North Entrance. It is bounded on the east by the Pacific Ocean and on the west by Tuggerah Lake. Formerly practically all the land was covered by trees, and although in some places they have been removed by development of one kind or another, including some mining operations, the greater part of the area is still covered by trees, and in some places it is very thickly covered. The peninsula is formed of sand, and the value of the area for scientific and other purposes is based in part on the fact that the flora is growing on sand. In particular, there is a rain forest, and a very substantial angophora forest, each of considerable beauty and each growing on sand. The 20

land is Crown land, and comprises in all approximately 1,750 acres.

Since some time in the 1950's the land has been the subject of a number of authorities and leases granted under the provisions of the mining legislation. There are four areas concerned which I shall refer to as M.L. 42, M.L. 48, M.L. 51 and M.L. 44. M.L. 42, which has an area of 237 acres less a public road, was held by a Mr. F.B. Jenkins pursuant to an authority to prospect for a period of twelve months from 4th June, 1957. Mr. Jenkins applied for a mining lease on 15th March, 1958 and on 3rd May, 1961 Special Lease No. 175 was granted to nominees of the second defendant. The nomination by Mr. Jenkins of these trustees for the second defendant was pursuant to an arrangement which had been previously made between him and the second defendant. The lease was for a term of five years. On 14th January, 1963, it was transferred to the second defendant. It was renewed until 3rd May, 1971 and an application further to renew it was made on 25th May, 1970, but this application has as yet neither been granted nor refused. M.L. 42 is the southern-most of these four areas.

10

20

The area immediately to the north of M.L. 42

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

is M.L. 48, which has an area of 450 acres 2 roods less a public road. This area was held under an authority to prospect by a Mr. J.R. Jenkins for a period of twelve months from 10th May, 1957. He applied for a lease on 15th March, 1958, and on 14th June, 1961, Special Lease No. 176 was granted to nominees of the second defendant. The lease was for a term of five years, and it was transferred to the second defendant on 14th January, 1963. It has been renewed to 14th June, 1971. An application for a further renewal was made on 24th June, 1970 but has not yet been granted or refused. 10

The area to the north of M.L. 48 is the area I have referred to as M.L. 51, which contains 537 acres less a public road. This area was previously held under an authority to prospect by Mr. F.M. Carpenter for a period of twelve months commencing some time in 1957 and ending in 1958 some time after 3rd August of that year. A lease was applied for on 3rd August, 1958, and Special Lease No. 202 was granted to nominees for the second defendant on 29th August, 1962. This lease was for a term of five years, and was transferred to the second defendant on 24th April, 1964. An application for its renewal was made on 19th July, 1967 but this 20



Reasons for Judgment  
of his Honour  
Mr. Justice Hope

application has not yet been granted or refused.

The fourth and most northern area is that known as M.L. 44, containing approximately 578 acres less a public road. It was previously held by Mr. A.F. Nicolle under an authority to prospect for a period of twelve months from 7th December, 1955. An application for a lease was made on 30th November, 1956, and Special Lease No. 369 was granted to the first defendant on 22nd February, 1967. This lease was a term of five years, and expires on 22nd February, 1972. The Special Leases granted in respect of M.L.'s 42, 48 and 51 are in respect of the surface of those areas and to a depth of 100 ft. below the surface. There is no limitation of depth in relation to the Special Lease in respect of M.L. 44. The defendants hold other leases, of which some adjoin the four areas I have referred to, and others of which are further to the north in the vicinity of Munmorah Lake. From time to time the Minister for Mines, pursuant to his powers under s. 118 of the Mining Act, has amalgamated the leases, the lease of M.L. 44 being amalgamated with the leases of M.L.'s 42, 48 and 51 at some time in 1969.

All the areas were from time to time the subject of drilling operations or programmes, as they

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

have been called. In respect of M.L. 44, some fairly extensive drilling operations took place in the period between December, 1955 and December, 1956. It has been estimated that there was approximately one drill hole for every four acres. In July, 1958, there was further drilling in the north-eastern corner of this land, the drilling comprising 10 about fourteen holes and being situated in an area which was the subject of special consideration at the time when the Minister for Mines was deciding what land should be included in the lease. Between December, 1963, and March, 1964, there was further drilling along a line commencing in M.L. 51, but crossing the south-western corner of M.L. 44. Between July, 1968 and June, 1969 there was further extensive drilling in M.L. 44, the extent of the drilling being somewhat similar to that which had 20 taken place between December, 1955 and December, 1956. In March, 1970 some more holes were drilled running in a north-south direction to the eastern half of this area, and in September, 1971 further holes were drilled in the western half of the area.

The first drilling in M.L. 51 took place between September, 1957 and December, 1957 and in that period holes were drilled at an estimated density

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

of approximately one drill hole per  $21\frac{1}{2}$  acres.

There was further drilling in M.L. 51 between December, 1963 and March, 1964 this drilling being carried out diagonally from the south-eastern corner of the area across to the boundary with M.L. 44 and through the south-western part of that area to the shore of Tuggerah Lake. After July 1964, and before February, 1970, there was some further drilling along three or four lines crossing this land from east to west. In March, 1970 six further holes were drilled in the north-eastern corner of this land.

10

Drilling on M.L. 48 took place between September, 1957 and December, 1957 and was of the same character and density as the drilling that took place during the similar period on M.L. 51. It has been estimated that there was one drill hole per 20 acres on this land at that time. Between 1st September, 1964 and 20th December, 1966 further more intensive drilling took place along eight lines running from east to west, three of the lines running across to the western boundary of the land and the remaining lines finishing near the site of the road which runs northwards from The Entrance. Between 22nd November, 1969 and 12th December, 1969

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

an amount of drilling was done along one line on the land. Some further drilling took place between February 1971 and June, 1971 along four lines running westward from the ocean shore. Between July, 1971 and September, 1971 further drilling took place along a number of lines running from south-east to north-west across the eastern part of this land. 10

Drilling in respect of M.L. 42 took place between September, 1957 and December, 1957 and was of the same general character and extent as occurred during that period in respect of M.L.'s 48 and 51. Further drilling took place between December, 1963 and March, 1964 along a line running across the southern part of this land from the Pacific Coast to the shore of Tuggerah Lake. Between July, 1964 and February, 1970 there was fairly extensive drilling along lines running across the land from the 20 coast to the road which runs near the shore of the lake. Most of this drilling took place along eight lines running westward from the ocean shore between 1st September, 1964 and 2nd August, 1966. The rest of this drilling along seven lines running from the coast to the site of the roadway was carried out between 2nd May, 1969 and 6th July, 1970. The last drilling appears to have taken place between July, 1971 and September, 1971 when a small number of

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

to the plaintiff concerning an access road from Wilfred Barrett Drive to M.L. 42, and on 18th February, 1969 the plaintiff informed the solicitors that it had rescinded its earlier decision to refuse permission for that access road but that it had only taken this action because it considered that the Company had a right to access with or without the plaintiff's approval, and that, as a matter of policy, it did not condone rutile mining on The Entrance North Peninsula. In April and May, 1969 several discussions took place between representatives of the defendants and some one or more of the plaintiff's officers. One of these discussions concerned the construction of a water pipe across Wilfred Barrett Drive and the other concerned the setting aside of land for, and the construction of, ovals on parts of M.L. 42.

10

20

In the meanwhile, applications had been made by Wyong Alluvials for special mining leases of two small areas to the south of M.L. 42, these applications being numbered 1614 and 1615 respectively. These areas did not include the rain forest or the angophora forest. On 28th March, 1969 the Department of Mines notified Associated Minerals, which had been nominated as the lessee, that the Minister had given his consent for it to occupy the areas

drillings took place along several lines towards the northern boundary of this land.

For purposes which I will describe later, it is material to know what had happened on the mining leases as at two dates, the first of these dates being 6th January, 1961. As appears from what I have already said, M.L. 44 had been extensively drilled 10 during two periods before that date, some 145 holes having been drilled by that time on this land. Only a small amount of drilling had taken place on M.L. 51, 25 holes having been drilled by that time. Likewise on M.L. 48 a comparatively small amount of drilling had taken place, 23 holes having been drilled. A similar position existed in respect of M.L. 42, 13 holes having been drilled on that land.

The other date as at which it is material to consider the extent and nature of the work that had 20 been carried out is 3rd May, 1968. As at that time in addition to the drilling which I have already described as having taken place before January, 1961 further drilling had occurred along a line running from the south-west corner of M.L. 51 towards its boundary with M.L. 44, and thence to the shore of Tuggerah Lake, and along a line running from the coast to the shore of Tuggerah Lake across the bottom of M.L. 42, some drilling may have taken place

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

on M.L. 51, and a considerable amount of additional drilling had taken place across the greater part of M.L. 48 and M.L. 42.

All the drilling which had been carried out before 6th January, 1961 was undoubtedly of an exploratory nature, that is, its purpose was to discover whether the lands contained any, and if so what, minerals, at what depth they were situated, and other matters relating to the nature and content of the sub-soil. With one exception, this drilling was carried out under the authority and during the currency of authorities to prospect and indeed about half of the drilling on M.L.'s 42, 48 and 51 was carried out by a company in no way connected with either of the defendants and which was concerned, as were the defendants, to discover whether it was worthwhile negotiating with the holders of the various authorities to prospect, in order to buy them out. Wyong Alluvials decided that it was worthwhile, in the light of the information obtained from this prospecting, to buy out the holders of the authorities to prospect, and did so, but no other drilling took place on these areas until after January, 1961. Associated Minerals likewise undertook the drilling operations on M.L. 44 in 1955 and 1956 in order to determine whether it was worthwhile

10

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

buying out two people called English and Kennedy, who themselves had bought out Mr. Nicolle, the holder of the authority to prospect on that area. Its investigation satisfied it that it was worthwhile doing so, and it accordingly entered into appropriate arrangements to have the lease in respect of this land granted to its nominees. The intention of both defendants at this time was that these areas should be added to their respective reserves, to be used for mining purposes when it became economical to do so. The mineral was of low-grade quality which current prices made it quite unprofitable to mine, and in any event neither company had the appropriate dredges or other machinery necessary to carry out the mining work until some years later. In respect of M.L. 44, a further small amount of drilling took place after the initial prospecting drilling and before January 1961. This drilling was in the north-eastern corner of M.L. 44 and was undertaken because the Minister wished to exclude from the lease an area which was on the outskirts of the village of Norah and which was the subject of a Reserve for Public Recreation. Associated Minerals carried out further exploratory drilling on this area in order to determine what attitude they should take towards the Minister's suggestion, and the further drilling which

10

20



they undertook satisfied the company that it should ask the Minister to include the land within the lease. The Minister acceded to this request, but included a special condition in the lease that no mining operations should take place on this area except with his written consent.

Some of the drilling work which was carried out between 6th January, 1961 and 3rd May, 1968 was of a rather different character. The drilling which took place on M.L.'s 42, 44 and 51 between December, 1963 and March, 1964 was undertaken for the purpose of valuing the mineral reserves that existed there, but the drilling that took place on M.L.'s 42 and 48 between 1964 and 1966 was of a more detailed character than the earlier drilling on those areas and was designed to find out more information concerning the nature, location and quality of the minerals partly for the purpose of having this information available and partly for the purpose of enabling a dredge path to be planned. After the information was obtained by these drillings a dredge path was planned by Wyong Alluvials, but was never made use of, because this Company together with Wyong Minerals was taken over by Associated Minerals in 1967, and the new management did not adopt the plans which had been made by Wyong Alluvials. It is not

entirely clear what the precise purpose of the additional drilling which took place on M.L. 51 after July, 1964 was, and indeed it does not appear whether this drilling was before or after 3rd May, 1968. It was of a significantly less intensity than the drilling I have described as taking place on M.L.'s 42 and 48 and on the evidence I am not satisfied that it was for any purpose other than exploration. Accordingly the drilling which took place between 6th January, 1961 and 3rd May, 1968 on M.L. 44 was simply for valuation purposes, and any drilling that took place in this period on M.L. 51 was exploratory. However the drilling that took place on M.L.'s 42 and 48 in this period was in part exploratory and in part a necessary preliminary to the planning of a dredge path to be followed in mining these areas.

The exploration work which was carried out before May, 1968 and later has revealed that the area contains a very large amount of valuable minerals. It is estimated that it contains approximately 342,000 tons of rutile and 193,000 tons of zircon, the value of which is said to be approximately 53,000,000 dollars at present-day values.

As is apparent from the recital of the various drilling operations on the land, from time to time

no work of any kind was being carried out on the four mining leases or on one or other of them.

Numerous applications were accordingly made under the Mining Act to have the labour conditions of the various mining leases suspended and these applications were granted, the ground of the applications being, in effect, that at the current prices for minerals, it would not be economical to mine the leases.

10

As I have already said, Wyong Alluvials prepared a dredge plan in respect of its leases at some time after December, 1966 but its mining plans were not implemented because of the takeover of its parent company, Wyong Minerals, by Associated Minerals, at some time in 1967. In 1962 and 1963 Consolidated Goldfields of Australia Limited, which had acquired a majority interest in Associated Minerals in 1961, considered its plans for the mining of what it called its southern division, which included areas held by Associated Minerals at Munmorah, which is somewhat to the north of the subject areas, and M.L. 44. As part of its plans, in 1963 it constructed a treatment plant on land it acquired at Hexham, this plant being designed to handle minerals from areas to the north of Newcastle as well as minerals from Munmorah and M.L. 44. However its intention then and for

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

some years later was not to mine M.L. 44 until it had completed the mining of its Munmorah holdings. The takeover of Wyong Minerals led to a reconsideration of its plans and at some time after that takeover, which was in 1967, and before December, 1968 it was decided that mining operations should commence on M.L. 42, M.L. 48 and possibly M.L. 51, and on two other small mining leases immediately to the south of M.L. 42 which Wyong Minerals also held. In June, 1969 a dredge was brought from Byron Bay and set up on M.L. 42. This dredge and the associated plant is called plant 10/10. After it was set up it commenced mining operations on M.L. 42 and then at some time in the second half of 1969 it moved on to the two small mining leases to the south of M.L. 42. It returned to M.L. 42 at some time in the first half of 1970 and has been operating on that mining lease, and on part of M.L. 48, since then. Its operations have been restricted to the eastern edge of these mining leases and its most northern operation was at about the centre of the eastern part of M.L. 48 towards the end of 1971. The value of this plant is said to be about 900,000 dollars. Some ancillary works have been constructed in connection with its operations on M.L.'s 42 and 48, including the formation of roads, the erection of

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

small buildings and the installation of power reticulation. In addition a water pipe has been laid from the shore of Tuggerah Lake in order to service the plant, which floats on water during its operation. The work which has already been carried out by plant number 10/10 has resulted in the removal of an extensive part of the natural growth on the surface of M.L.'s 42 and 48, although this interference is restricted to the eastern edge of these leases. An amount of restoration of contours and natural growth has been carried out or attempted, but the growth comprises principally grasses and there are not yet many trees growing on the mined areas. When Associated Minerals was planning for the mining of these areas, it decided that it would commence mining on M.L. 44 in December, 1971. It accordingly brought a dredge and associated plant known as plant number 20 from Munmorah and commenced its installation at a point on M.L. 44 in July, 1971. The value of this plant is said to be about 800,000 dollars. Some ancillary works have also been carried out, including the construction of a short access road and the installation of a power supply and a water pipe. This plant has not yet been used for any mining operations.

At all relevant times the land has been valued

and rated for the purposes of and under the Local Government Act as a mine. This course would follow necessarily from the definition of "Mine" to be found in s. 4 of the Local Government Act, for by that definition a mine is not merely land used for a mining purpose, but includes land held for a mining purpose. When lands become the subject of mining leases, they are held for mining purposes, and are accordingly mines within the meaning of this definition even though they are not used for mining purposes. 10

The defendants employ a large number of people both in connection with the operations on the land I have described, and in their administrative offices. It is said by the defendants that if the operations on the mining leases I have described were stopped, it would be necessary to lay-off approximately 70 20 employees who were employed on those mining leases, and also approximately 20 employees at a treatment plant which the defendants operate at Hexham. It would also involve disturbance and loss to suppliers of material and services to the defendants, and to contractors in respect of activities such as cartage. In addition to the administrative staff, the defendants employ a technical staff, including geologists, mining engineers, surveyors, metallurgists

and chemists, and they from time to time have carried out and supervised detailed technical investigations concerning the winning and separation of the ore. This work involved not only the assaying and recording of samples, but pilot scale investigations into the performance of the particular ore in various types of mineral separation. They also assessed the reserve of ore in each of the mining leases. 10

The area of the Wyong Shire Council became subject to the provisions of Division 7 of Part XIIIA of the Local Government Act, and of the Town and Country Planning (General Interim Development) Ordinance, being Ordinance No. 105, on 6th January, 1961. Under the provisions of Ordinance No. 105, "Mine" is defined to have the meaning ascribed to it in the Mines Inspection Act, 1901-1905, and the Coal Mines Regulation Act, 1912-1941, but does not include a quarry. The definition of "Mine" in the Mines Inspection Act, 1901-1905 is:- 20

"Mine" means and includes any place, open cut, shaft, tunnel, drive, level, or other excavation, drift, gutter, lead, vein, lode, or reef wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any metal or mineral other than coal or shale, by any mode or method, and any place adjoining thereto on which any product of the mine is stacked, stored, crushed, or otherwise treated and also includes any quarry". 30

Apart from the reference to a quarry, it will

be seen that this definition appears to be the origin of definitions of "Mine" to be found in Planning Scheme Ordinances. Under clause 4 of Ordinance No. 105, except as provided in and subject to clause 5 of the Ordinance, interim development of the classes therein set out might be carried out, and some six classes are described. It is only relevant for present purposes to consider two of these classes. The first of those classes, Class 1, is described as:-

"Development other than the erection of permanent buildings or the construction of roads and bridges which may be carried out under powers conferred by any Act being an Act which specifically designates the land in respect of which those powers may be exercised."

The other class is Class 5, which is:-

"Development of any description specified in Schedule 1 of the Ordinance."

One of the classes of development described in this Schedule is to be found in clause 6 thereof in the following terms:-

"The carrying out by the owner or lessee of a mine on the mine, of any development required for the purpose of the mine except:-

- (a) The erection of buildings not being plant or other structures or erections required for the mining, working, treatment or disposal of minerals and the reconstruction, alteration or extension so as materially to affect the design or external appearance thereof of buildings.



- (b) The formation or alteration of any means of access to a road."

Clause 5 of Ordinance No. 105 provides that subject to clause 5, the provisions of sub-clause 1 of clause 4 shall not apply in certain circumstances, which are then set out. I do not think it is material to consider any of these provisions for present purposes. Clause 6 of the Ordinance provides that development which is not permitted by the Ordinance shall not be carried out except with the permission of the Interim Development Authority. Clause 9 of the Ordinance contains a special provision in relation to applications relating to mine buildings. It is common ground that no application was made for consent under this Ordinance, and that no consent was granted in respect of any of the operations on the mining leases I have described.

The Shire of Wyong Planning Scheme Ordinance was proclaimed in the Government Gazette of 3rd May, 1968 which day is the appointed day for the purposes of the Ordinance. In general the Ordinance takes the same form as most Planning Scheme Ordinances do, although there are some material differences in detail. "Mine" is defined in clause 3 to mean:-

"any place, open cut, shaft, tunnel, pit, drive, level or other excavation, drift, gutter, lead, vein, lode or reef wherein whereon or whereby any operation is carried

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

on for or in connection with the purpose of obtaining any metal or mineral by any mode or method, and any place adjoining on which any product of the mine is stacked, stored, crushed or otherwise treated, but does not include a quarry."

In Part III of the Ordinance, provision is made for the purposes for which land in various zones cannot be used at all, can be used without the consent of the responsible authority, or can be used only with the consent of the responsible authority. The whole of the land comprised in M.L.'s 42, 48 and 51 and part of the land within M.L. 44 is zoned under the Ordinance as "Open Space - Recreation." Part of M.L. 44 is zoned as "Non-Urban A" and the residue of M.L. 44 is zoned "Residential A". In respect of the land within the open space recreation zone, mining for or in connection with the purpose of obtaining ilminite, monocite, rutile, zircon and similar materials may be carried out with the consent of the responsible authority, but mines otherwise are prohibited. In the non-urban A zone, mining can be carried out with the consent of the responsible authority. In the residential A zone, mining is absolutely prohibited.

Part IV of the Ordinance contains provisions protecting existing buildings, works and uses. Clause 14 provides:-

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

"14. Notwithstanding the provisions of Part III and Part VI, but subject to the provisions of Part II of this Ordinance an existing building or an existing work may be maintained and may be used for its existing use and an existing use of land may be continued notwithstanding that such existing use is for a purpose for which buildings or works may not be erected or used or for which land may not be used under Part III or Part VI of this Ordinance in respect of the zone in which such existing building or existing work or land is situated." 10

Clause 18 provides:-

"18. The foregoing provisions of this Part shall not apply to an existing building or work or to an existing use of a building, work or land which was erected or carried out or commenced after 6th January, 1961, in contravention of the provisions of the Town and Country Planning (General Interim Development) Ordinance or of any permission or modification thereof granted under Division 7 of Part XIII A of the Act or under that Ordinance." 20

It will be noticed that clause 14 operates notwithstanding the provisions not only of Part III of the Ordinance, but also of Part VI of the Ordinance. Part VI of the Ordinance, which is headed "Special Provisions", contains, inter alia, clause 44, which makes provision for the making of tree preservation orders. I will refer to the provisions of this clause subsequently. It also contains clause 46, which provides that the responsible authority, before determining any application made to it for its consent for the use of land within zone No. 6(a) for the purposes of a mine, shall consult with the 30 40

Authority, and shall not grant its consent to such an application except with the concurrence of the Authority, and in the case of such concurrence being given, shall attach to its consent such conditions as the authority may require to be imposed. The Authority referred to is the State Planning Authority, and zone No. 6(a) is the open space recreation zone. Part VI of the Ordinance contains clause 48, which provides, inter alia, that nothing within the Ordinance shall be construed as restricting or prohibiting or enabling the responsible authority to restrict or prohibit the carrying out of development of any description described in Schedule 6 to the Ordinance. It will be noticed that this provision operates notwithstanding anything contained in the Ordinance, including anything contained in Part VI of the Ordinance. 10

One of the classes of development described in Schedule 6 is to be found in paragraph 6 and is in the following terms:-

"The carrying out by the owner or lessee of a mine of any development required for the purposes of the mine, except:

- (a) The erection of buildings not being plant or other structures or erections required for the mining, working, treatment or disposal of minerals, and the reconstruction, alteration or extension of buildings so as materially to affect the design or external appearance of 30

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

- (b) The formation or alteration of any means of access to a road."

It is common ground that no consent in respect of any of the operations the subject of these proceedings was applied for or was given under this Ordinance. The plaintiff claims that what the defendants have done with Plant number 10/10 and what they propose to do with this Plant, the setting up of Plant number 20, and what they propose to do with that Plant, are in breach of the provisions of the Planning Scheme Ordinance, and it accordingly seeks an injunction to restrain the continuance of those breaches. 10

Clause 44 of the Ordinance authorises the making of tree preservation orders by the Council. The Council purported to make three of these orders in the second half of 1971. On 22nd July, 1971 it resolved as follows:- 20

"RESOLVED

That the Council immediately place a Tree Preservation Order on the whole of the red gum forest at The Entrance North west of Wilfred Barrett Drive and contained within the boundaries of ML.44 and ML.51."

On 9th September, 1971 the Council passed a further resolution in the following terms:-

"RESOLVED

That a Tree Preservation Order be placed on the Mining Company's lease at

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

The Entrance North until the Council becomes aware of the Company's intentions."

On 9th December, 1971 the Council passed the following resolution:-

"RESOLVED

That Council being of the opinion that it is expedient in the interests of amenity to make provision for the preservation of trees pursuant to Clause 44 of the Shire of Wyong Planning Scheme Ordinance HEREBY PROHIBITS the ringbarking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree within the Shire of Wyong except with the consent of the Council." 10

In the present suit the plaintiff claims that the first and third of these resolutions created valid tree preservation orders, and seeks injunctions to restrain the defendants from infringing their provisions. 20

In answer to the plaintiff's claims, the defendants firstly submit that the matter of mining is regulated by the provisions of a special Act, namely, the Mining Act, 1906, as amended, and that operations authorised by or carried out in pursuance of the provisions of that Act, or of any authority or lease granted thereunder, are entirely outside the operation of Part XIIIA of the Local Government Act, and of any Planning Scheme Ordinance made thereunder. They nextly submit that if the Planning Scheme Ordinance does apply, the defendants have 30

the benefit of Part IV of the Ordinance by reason of an existing use. Thirdly, they rely upon the provision of clause 6 of Schedule 6 to the Ordinance, and submit that by reason of its provisions they are entitled to carry on the operations which they have carried on, and which they propose to carry on, without obtaining any consent under the Ordinance from the plaintiff. Fourthly, they rely on acquiescence and a number of other circumstances by reason of which it is submitted, even if I came to a view contrary to their submissions in respect of other matters, I should grant no injunctions. 10

They also submit that the tree preservation orders which the Council has purported to make are not valid and do not operate in law to prevent the defendants from cutting down or otherwise removing or destroying trees. In support of this submission they claim not only that the particular orders were bad, but that clause 44 itself, in pursuance of which the Council purported to make these orders, is invalid. 20

The first question which I will consider is whether the provisions of the Mining Act, being a special Act, regulate mining operations carried out pursuant to its provisions, or the provisions of any regulations made under it, or any lease or other

right granted pursuant to it, to the exclusion of the provisions of Part XIIIA of the Local Government Act, and of any Ordinance made under its provisions. Part XIIIA did not appear in the Local Government Act in 1919, and was inserted in 1945. By s. 342B, which appears in Part XIIIA, "Land" is defined for the purposes of the Part to include inter alia all lands of the Crown. Accordingly, the Governor is authorised to make planning scheme ordinances which do affect and bind the Crown and other persons in respect of the use of Crown Land. 10

Part XIIIA is, of course, of general application, but deals with a special matter, namely, the matter of town and country planning. Rightly or wrongly, many planning scheme ordinances have been made which do purport to regulate, one way or another, mining. The question of the operation of general and special Acts was considered by the High Court in Bank Officials' Association (South Australian Branch) v. Savings Bank of South Australia, (1923) 32 C.L.R. 276 at page 289 et seq. In the joint judgment of Isaacs and Rich, JJ., it was said at page 289:- 20

"As to the second ground, namely, the maxim *Generalia specialibus non derogant*, the first requisite is to get a clear understanding of its meaning. In Barker v. Edger (1898) A.C. at page 754, it is said:- 'The general maxim 30



is, *Generalia specialibus non derogant*.  
When the Legislature has given its attention  
to a separate subject, and made provision  
for it, the presumption is that a subsequent  
general enactment is not intended to inter-  
fere with the special provision unless it  
manifests that intention very clearly. Each  
enactment must be construed in that respect  
according to its own subject matter and its  
own terms.'"

10

It does not seem to me, looking at the provi-  
sions of the Mining Act and of Part XIII A of the  
Local Government Act, that it was intended that there  
should be excluded from the operation of Part XIII A  
all or any mining operations authorised or permitted  
by the provisions of the Mining Act. What the Mining  
Act does is to provide a means by which a person can  
obtain a right as against the Crown or a subject to  
prospect and to mine. It does not seem to me to be  
concerned in any way with matters such as those dealt  
with by Part XIII A of the Local Government Act. The  
provisions of this Part are not concerned with the  
nature of the right or privilege pursuant to which  
persons carry out the development or use of land;  
they are concerned with the use itself. No doubt  
some provisions of the Mining Act and Regulations  
may impose obligations on persons as distinct from  
granting them rights or privileges, and of course the  
terms of leases granted pursuant to the Act and Regu-  
lations normally do impose obligations on the

20

30

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

grantee. It does not seem to me, however, that for this reason the provisions of the Mining Act take mining operations outside the scope of Part XIII A. In this regard I think it is important that s. 10 of the Local Government Act, which specifies a number of Acts the provisions of which shall not be affected by the Local Government Act, does not refer to the Mining Act, and it is also relevant to have regard to the provisions of s. 342B, under which land is defined for the purposes of Part XIII A to include all lands of the Crown. Having regard to the subject-matter and to the provisions of each Act, I think that mining operations on any land within an area to which a prescribed scheme applies, or in respect of which Division 7 of Part XIII A of the Local Government Act applies, are subject to the provisions of that scheme or that Division.

10

20

The next matter to be considered is whether the defendants are entitled to rely upon any existing use to support their present and proposed operations. For this purpose it is necessary to ascertain the purpose for which the land was being used immediately before 3rd May, 1968. However, since by clause 18 of the Ordinance the owner or occupier of land is not entitled to rely upon Part IV if the relevant use commenced after 6th January, 1961

in contravention of the provisions of the Town and Country Planning (General Interim Development) Ordinance, it is also necessary to see what activities had taken place on the land before 6th January, 1961 what activities had commenced there between 6th January, 1961 and 3rd May, 1968 and whether any permission was required in respect of the latter activities. 10

As at 6th January, 1961 drilling operations had taken place on all the mining leases, but there had been no drilling since July, 1958. As I have already described, most of this drilling was directed to whether it was worthwhile acquiring mining rights in respect of the land, and the rest to the analogous question whether the mining lease in respect of M.L. 44 should include an area of land on its north-eastern corner. If it were necessary to decide it, I should have thought that Associated Minerals in respect of M.L. 44, and Wyong Alluvials in respect of M.L.'s 42, 48 and 51, had ceased to use the land for this prospecting purpose, as I regard it, before 6th January, 1961 although each company continued to have the intention that these respective areas should be acquired and held as mining reserves. However, in the light of my other findings, I do not think it is necessary further to investigate this question. 20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

The land became subject to the provisions of Division 7 of Part XIII A of the Local Government Act before the commencement of the Local Government (Town and Country Planning) Act, 1962, and no Interim Development Order was made in respect of it. Accordingly, having regard to the definitions of "development" and "interim development" in s. 342T(1) of the Local Government Act, and the provisions of Ordinance No. 105 and of s. 7 of the Local Government (Town and Country Planning) Act, 1962, any use of the subject lands for purposes which were different from the purposes for which they were being used before 6th January, 1961 would have required the plaintiff's consent, unless, in the circumstances, that consent was rendered unnecessary by some provision of Ordinance No. 105. It must therefore be determined whether the lands were used after 6th January, 1961 for a purpose for which they were not then being used. From December, 1963 to March, 1964 an amount of drilling was carried out on M.L.'s 42 and 51, and a small amount of drilling also took place at the same time on M.L. 44, but the purpose of these drillings was to assess the value of the reserves held by Wyong Alluvials and Associated Minerals, and they were not otherwise associated with any mining purpose. Thereafter, no drilling was carried out on

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

M.L. 44 until after 6th May, 1968. However drilling did take place on M.L.'s 42 and 48 between 1964 and December, 1966. It is possible that some further drilling also took place on M.L. 51 during this period, but I am not satisfied that it did. The drilling that took place on M.L.'s 42 and 48 which, together with M.L. 51, were held by Wyong Alluvials 10 was in part for the purpose of learning more about the minerals in these areas and in part in order to enable Wyong Alluvials to prepare the plan for a dredge path; and at some time before the end of 1967 a dredge path was prepared by officers of Wyong Alluvials in respect of these lands. No further drilling took place on M.L.'s 42, 48 or 51 until after 6th May, 1968. If these operations are to be regarded as being of an exploratory character rather than as being the first part of true mining opera- 20 tions, and assuming that the use of the land before 3rd January, 1961 for the purposes I have described had not in the meanwhile ceased, then these operations might be regarded as the use of the lands for the same purposes for which they had previously been used, and hence no consent by the plaintiff was necessary for them. If on the other hand they are to be regarded as a use of the land for a purpose different from the previous purpose, then a consent would be

required for that use, unless it fell within some exception under the provisions of Ordinance No. 105. As regards M.L. 44, the same position applies, although the purpose of the small amount of drilling that took place between December, 1963 and March, 1964, on this land, and at the same time on M.L.'s 42 and 51, was more limited than and different to the purpose of the drilling which took place on M.L.'s 42, 48 and 51 between 1964 and 1966. 10

The question whether the use of the lands for the prospecting and exploratory purposes which occurred before 6th January, 1961 was a different use from that which occurred between this date and 6th May, 1968 does not seem to me to depend upon any definitions appearing in statutes or ordinances, although no doubt some regard may be had to those definitions in determining the question. The question whether the purposes of the uses were different is, I think, a question of fact, and if any use between 1961 and 1968 is to be regarded as the use of the land for the purposes of a mine or for some purpose preliminary or ancillary to and necessary for the purpose of mining, then I think that these purposes were different from the prospecting purposes for which the land was used before this time. The distinction in fact between prospecting purposes and 20

mining purposes is apparent; prospecting is something which is carried out in order to determine whether it is worthwhile mining land, whilst mining, and activities ancillary or preliminary to but necessary for mining, are or may be regarded as part of the business of carrying on a mine. Prospecting may be of a superficial or of a most intensive character, 10 but it may or may not result in mining in the ordinary sense of the word, and it is apparent that planning considerations applicable to prospecting would be quite different to the considerations applicable to mining. Prospecting would not normally interfere with the other use of the land which is being investigated, but mining operations may, and normally do, interfere with those activities to a large extent. The drilling operations which took place on the land before 6th January, 1961 were pur- 20 ely of a prospecting character, including those which took place on the north-east corner of M.L. 44 in July, 1958 for these latter operations were directed to insisting that a particular area of land should be included within M.L. 44. The activities between December, 1963 and March, 1964 were of an exploratory character and had nothing to do with the mining of the land; they were simply directed to the valuation of an asset. However the activities which

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

took place from 1964 to December, 1966 were of a more detailed character and were designed not merely to find out what minerals existed upon the lands but also to enable a dredge path to be planned and thus mining to take place. They thus appear to have been truly preliminary to mining, and possibly may have been followed more quickly by actual mining had not the negotiations for the takeover of Wyong Minerals by Consolidated Goldfields of Australia Limited taken place. It is arguable that these activities may nonetheless be regarded as exploratory only and not as being mining operations either in the ordinary sense or within the definition of "mine" in Ordinance No. 105. They were necessary in order to determine how the land was going to be mined, in the same way as drilling operations on a building site may be necessary to determine how that site can be developed; one would have thought that the information they provided would be important and possibly necessary if an application had been made to the plaintiff for its consent to the mining of the land, for the determination of the question whether that consent should be granted and what conditions, if any, should be imposed upon it, including conditions relating to the matters referred to in clause 2(b) of the Planning Scheme Ordinance. If this be the correct view,



Reasons for Judgment  
of his Honour  
Mr. Justice Hope

then no consent of the plaintiff would have been necessary for those activities, but likewise there would have been no mine within the meaning of Ordinance No. 105 or of the Shire of Wyong Planning Scheme Ordinance on the lands as at 3rd May, 1968.

If the activities which took place between 1964 and December, 1966 were the use of the lands for a purpose different from the purpose for which they were used before 6th January, 1961 then the consent of the plaintiff was required unless the new use fell within some exception in Ordinance No. 105, of which the only relevant one is that to be found in clause 6 of Schedule 1 to the Ordinance. This provision involves difficulties of construction, but it seems to me that it does not apply unless there is a mine in existence; if there is a mine in existence, then, with some exceptions, development on the mine required for the purpose of the mine can be carried on without the consent of the plaintiff. However it does not mean that mining can be commenced on land on which no mine exists. As it seems to me, the prospecting of land does not create a mine upon that land, either within the meaning of the definition in Ordinance No. 105 or at all. Even if this definition is wide enough to extend to include operations preliminary to the actual removal of

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

minerals, it is not wide enough to extend to operations directed to finding out whether there are any minerals on the land at all. Moreover, a construction of the definition of "mine", which would include prospecting operations seems to me to be entirely inconsistent with the provisions of Ordinance No. 105 and with general planning concepts. It is difficult to imagine that it was intended by clause 6 of the First Schedule to Ordinance No. 105 that land could be mined without consent merely because someone had made some tests to discover whether it would be possible at all to mine the land. If there was a mine upon the land, then no doubt, as an interim measure, it would be proper to allow the mining to continue without interference, but no such consideration applies where only prospecting activities had been carried out.

I have been referred to some decisions of the High Court in relation to s. 122 of the Income Tax Assessment Act and it has been suggested that these decisions are authority that mining operations include prospecting operations. One of these decisions is B.H.P. Company Limited v. Commissioner of Taxation, (1967-68) 41 A.L.J.R. 377; on appeal (1968-69) 43 A.L.J.R. 89. Section 122 provides, inter alia, that where a person, in connection with

the carrying on by him of operations upon a mining property for the purpose of gaining or producing assessable income, has incurred expenditure of a capital nature on necessary plant, development of the mining property or housing and welfare, an amount ascertained in accordance with the section is to be an allowable deduction in respect of that expenditure. At first instance, Kitto, J., considered, inter alia, what the expression "mining operations" meant in this provision and said at page 380:-

"This expression is wider than 'the working of a mining property'. It embraces not only the extraction of mineral from the soil but also all operations pertaining to mining; Parker v. Federal Commissioner of Taxation, (1953) 90 C.L.R. 489 at page 494. Thus it comprehends more than mining in the narrow sense which imports the detaching of lumps of material from the position in which in a state of nature they form part of the soil. It extends to any work done on a mineral-bearing property in preparation for or as ancillary to the actual winning of the mineral (as distinguished from work for the purpose of ascertaining whether it is worthwhile to undertake mining at all); Federal Commissioner of Taxation v. Broken Hill South Ltd., (1941) 65 C.L.R. 150 at pages 153, 156, 159 161. Likewise it extends to any work done on the property subsequently to the winning of the material (e.g. transporting, crushing, sluicing and screening) for the purpose of completing the recovery of the desired end product of the whole activity: Federal Commissioner of Taxation v. Henderson, (1943) 68 C.L.R. 29 at pages 45, 50."

On appeal the Full Court expressed a reservation as to work done after the winning of the mineral, but does not appear to have disagreed with

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

what Kitto, J., otherwise said as to the meaning of this expression.

Another decision to which I have been referred to is that of Walsh, J., in Imperial Chemical Industries of Australia and New Zealand Limited v. Commissioner of Taxation, (1971) 46 A.L.J.R. 35. The principal question in that case was whether the recovery of salt by a particular process and system involved the carrying on of mining operations upon a mining property. Walsh, J., held that it did, but also held that the taxpayer was entitled to deduct certain capital expenditure incurred in the exploration and prospecting of the mining property. As it seems to me, this decision does not involve a decision that there is no distinction between prospecting and mining, and indeed there are a number of provisions of the Income Tax Assessment Act which seem to emphasise this distinction. As it seems to me, it is necessary, if a taxpayer is to come within s. 122, that he establish that he is carrying on mining operations on a mining property, and if he establishes that he is, he is then entitled to a deduction in respect of capital expenditure incurred in the development of that property. Any capital expenditure involved in exploration and prospecting may be such expenditure, but not because in itself the

10

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

prospecting operation has been part of the mining operation. In any event, as was said by Dixon, C.J. and Williams and Taylor, J.J., in New South Wales Associated Blue Metal Quarries Ltd. v. Federal Commissioner of Taxation, (1955-56) 94 C.L.R. 509 at page 522, the meaning of the words "mine" and "mining" like the word "minerals" is by no means fixed and is readily controlled by context and subject-matter. In the context and subject-matter by Ordinance No. 105, I do not think that prospecting operations fall within the definition of "mine" in that Ordinance. Accordingly insofar as the drilling operations that took place upon the lands between 1964 and December, 1966 were mining operations and not prospecting operations, the commencement and carrying on of those operations without the consent of the plaintiff was in contravention of the provisions of Ordinance No. 105. No such consent was obtained or indeed sought. It follows that the defendants are not entitled to rely upon any existing use to justify the present and proposed mining operations upon the lands. 10

It is then submitted for the defendants that no matter what rights they have under Part IV of the Planning Scheme Ordinance, they are entitled to the benefit of clause 6 of Schedule 6 of that Ordinance.

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

Although the wording of that clause is slightly different from the wording of paragraph 7 of Schedule 1 to Ordinance No. 105, I think, for the reasons I have already expressed in relation to the latter paragraph, that clause 6 of Schedule 6 does not apply unless there is already a mine upon the land. The defendants point to the drilling operations I have described as having taken place between 1964 and 1966 and to the mining operations that have taken place upon the land since 3rd May, 1968 and claim that whether or not those operations were, or were in their inception, illegal, they created a mine upon the land and that they are accordingly entitled to the benefit of clause 6 of Schedule 6. If the drilling operations between 1964 and 1966 created a mine within the meaning of the relevant definition upon the land, then that creation was illegal and in contravention of the provisions of Ordinance No. 105. In those circumstances it seems to me that the considerations which were applied in Grozier v. Tate, 64 W.N. (N.S.W.) 1, apply, and the defendants are not entitled to rely upon the use which they illegally commenced and continued in order to bring themselves within the exception in Schedule 6. I have been referred in this regard to the recent decision of the High Court in Parramatta

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

City Council v. Brickworks Limited (unreported) in which it was held that a land owner was entitled to rely upon a use of land before the commencement of a planning scheme as an existing use for the purposes of that scheme, even though that use had been commenced and was carried on in breach of the provisions of a proclamation under s. 309 of the Local Government Act, 1919. However the basis of this decision was that the prohibitions and restrictions created by the proclamation ceased to have effect upon the coming into operation of the prescribed scheme, and were not continued under that scheme, and it was pointed out that the case was not one "when a by-law or proclamation that makes a specified use of land illegal is repealed by another by-law or proclamation under which that use remains illegal". In the present case, the provisions of Ordinance No. 105 made mining operations upon the land without the consent of the plaintiff illegal (assuming they were not a continuance of mining operations carried on before 6th January, 1961) unless they fell within the scope of an exception set out in Schedule 1 to the Ordinance. Ordinance No. 105 ceased to apply to the subject land once the planning scheme was prescribed, but mining operations on the subject lands were, by the provisions

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

of that Ordinance, made illegal either absolutely or without the consent of the Council, unless they fell within an exception which for practical purposes was identical with the exception in Schedule 1 to Ordinance No. 105. In these circumstances I think that the decision in Parramatta City Council v. Brickworks Limited, (supra), is not applicable 10 and that the defendants are not entitled to rely upon the illegal mining operations before 3rd May, 1968 to justify a claim that they fall within the exception in clause 6 of Schedule 6 to the Ordinance. The contrary view would mean that although the defendants could not treat any mining operations carried on in contravention of the provisions of Ordinance No. 105 as creating an existing mine for the purpose of Part IV of the Planning Scheme Ordinance, they would be entitled to do so for the purposes of 20 Schedule 6. I do not think that this can be the proper construction of this Schedule. For similar reasons, I do not think that the defendants can rely upon the mining operations since 3rd May, 1968 to come within the exception in Schedule 6. Accordingly the mining operations which have been carried on and are proposed to be carried on upon the lands by the defendants without the consent of the plaintiff are illegal and in breach of the provisions of the Planning Scheme Ordinance.

Reasons for Judgment  
of his Honour  
Mr. Justice Hope



Reasons for Judgment  
of his Honour  
Mr. Justice Hope

In addition to claiming that the mining operations of the defendants are in breach of what I might call the general provisions of the Shire of Wyong Planning Scheme Ordinance, the plaintiff claims that the defendants threaten and intend to destroy trees on their respective mining leases in breach of the provisions of two of the tree preservation orders which it has purported to make. These orders are those which it purported to make on 22nd July, 1971 and 9th December, 1971. The plaintiff also purported to make a tree preservation order on 9th September, 1971 but it is not relying on that order in these proceedings. The defendants claim that clause 44 of the Ordinance, being the clause which authorises the making of tree preservation orders, is invalid, that by reason of their terms the two orders relied upon by the plaintiff are not authorised by clause 44, and that before making them the plaintiff did not give notice of its intention to and hear representations from the defendants concerning them as it submits the plaintiff was required to do. In relation to the validity of clause 44, the defendants submit that the only source of power for the inclusion of this clause in the Ordinance is to be found in S.342G(2) or S.342G(3)(p). It submits that the clause does not come within the scope of

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

either of these provisions, but that in any event the effect of clause 44 is to delegate to the Council a legislative power, and that the Governor is not authorised by s. 342G to confer such a power upon the Council, either at all, or at any rate in relation to the matter dealt with by clause 44. Assuming the validity of clause 44, the defendants submits 10 that it does not authorise the Council to make something called a tree preservation order without specifying the particular activities which it prohibits, and that it is not permissible to make a general order applying to all trees in a municipality or shire. If the clause is valid and it is permissible to make orders in either of these terms, it is submitted that since the exercise of the power conferred by the clause directly affected the property rights of the defendants, they should have been given notice 20 of the plaintiff's intention to make any such order and should have had an opportunity of being heard in relation to it before it was made.

Sub-clause (1) of clause 44 authorises the Council to make an order where it is expedient in the interests of amenity to make provision for the preservation of any tree or group of trees. By sub-clause (2) a tree preservation order may prohibit the ringbarking, cutting down, topping,

lopping, removing, injuring or wilful destruction of any tree or trees specified in the order except with the plaintiff's consent. If it were intended that every tree preservation would prohibit each of the acts enumerated in sub-clause (2), it seems to me that that sub-clause would provide that a tree preservation order "shall" prohibit those acts rather 10 than that is "may" prohibit those acts. Thus a council may not be concerned to prevent the topping or lopping of trees, but may be concerned otherwise to prevent their destruction. The language of the clause suggests that a tree preservation should specify the acts which it is intended to prohibit, and that an order such as that one made by the plaintiff on 22nd July, 1971 is not authorised by clause 44.

Sub-clause (3) of clause 44 provides that any 20 tree preservation order may, inter alia, relate to any tree or trees on land described in the order, and that the land may be described particularly or generally by reference to the shire or any division thereof. Literally, this sub-clause authorises the making of an order in relation to all trees in the whole of the shire, and I see no reason why such a construction should not be given to it.

The question whether the clause is authorised

by s. 342G is a more difficult question. For many purposes a distinction is made between legislative powers and administrative powers, and there is authority for the view that this distinction is of importance in relation to delegated legislation. It has been said, and indeed held, that in the absence of some express provision, a person or body upon whom a statute confers a power to make ordinances, regulations or other forms of delegated legislation may not confer a legislative power on some other body, although it may confer an administrative power on some other body. This distinction was applied by Bridge, J., in R. v. Lampe; Ex parte Maddalozzo, (1963) 5 F.L.R. 160. In that case the Building Ordinance 1955 of the Northern Territory empowered the administrator of the Northern Territory to make certain regulations. The administrator made regulations in which, inter alia, a penalty was provided when a building to which the regulations applied did not comply with what was described as the Building Manual. The Building Manual was defined in the regulations to mean determinations made by a Building Board and published in accordance with the regulations, and Reg. 32 authorised the Board to make determinations with respect to a large number of specific building matters, including ventilation

10

20

and the installation of natural light in or with respect to buildings of any class. Regulation 33 authorised the publication of any determination under the authority of the Board in a Building Manual. Bridge, J., held that the Legislative Council of the Northern Territory which had made the ordinance had plenary powers, and that it could confer on the administrator both legislative and administrative powers, but that the administrator, in the exercise of these powers, could not, unless authorised so to do, confer upon another body such as the Building Board any legislative powers, although he could confer administrative powers upon them. He also held that the power to make determinations and to publish them in the Building Manual was administrative and not legislative, and that accordingly the administrator was authorised by the Ordinance to make a regulation conferring such a power upon the Board. In coming to this conclusion, Bridge, J., said that the matter was not to be determined by the application of the maxim "delegatus non potest delegare", but upon the application of a proposition that a delegation of legislative powers does not extend beyond the powers so specified, and except insofar as they included a power to sub-delegate any purported sub-delegation of them is ultra vires

the terms of the delegation. By this, as it seems to me, he held that the question was one of construction, in relation to which the distinction between legislative and administrative powers is a relevant one to consider. I think that this is a correct approach, but it does not provide any simple solution to the present question, for, as it seems to me, in the absence of any express provision, the question whether a power to confer legislative power on another person or body has been given to an ordinance or regulation-making body depends not only upon the words used in the relevant statute, but upon the subject-matter of the power and other matters of context. Furthermore, the distinction between legislative powers and administrative powers is one which does not seem capable of any but the most general definition. Perhaps this view is confirmed by the conclusion of Bridge, J., that the Building Board's determinations considered in R. v. Lampe; Ex parte Maddalozzo (supra) were of an administrative rather than a legislative character, despite the effect given to those determinations by the regulations. 10 20

It is clear that some of the special matters referred to in s. 342G(3) would almost of necessity involve the delegation of administrative powers to

the Council or other responsible authority. Thus paragraph (u) of the sub-section authorises the inclusion in planning schemes of provisions for or in relation to the acquisition of land for any purpose of the scheme. Although no doubt a scheme might provide for the acquisition of an identified parcel of land, I think that this paragraph authorises the inclusion in a scheme of a provision such as this to be found in clause 49 of the County of Cumberland Planning Scheme Ordinance whereby the responsible authority may acquire land for any purpose of the Scheme. Again, I think that some of the particular matters are of such a character that they can properly be considered as authorising the inclusion in a scheme of a provision conferring power upon a council or other responsible authority to exercise legislative power. Thus paragraph (r) of the sub-section authorises the inclusion in schemes of provisions for or in relation to securing the safety of persons and property from hostile attack. For similar reasons to those given by Fullagar, J., in Australian Communist Party v. The Commonwealth, (1950-1951) 83 C.L.R. 1 at 257, for the view that a statute which authorised the Federal Executive to make regulations for the securing of the public safety and the defence of the Commonwealth

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

authorised the delegation of legislative power, I think that paragraph (r) authorises the inclusion in a scheme of a provision giving legislative powers to the responsible authority. The question then arises whether the power which clause 44 of the Shire of Wyong Planning Scheme Ordinance confers upon the Plaintiff is a legislative power or an administrative power, and if it is a legislative power, whether it is authorised by s. 342G. Both these questions are difficult and important questions, the answers to which will affect not only the provisions of the Shire of Wyong Planning Scheme Ordinance but the similar provisions to be found in almost every, if not all, planning scheme ordinances. Since I have come to the conclusion that the carrying on by the defendants of their mining operations upon the four mining leases is in breach of other provisions of the Ordinance, and since, if I had come to the view that the defendants were entitled to carry on those operations either because of an existing use or because of the provisions of paragraph 6 of Schedule 6 to the Ordinance, the tree preservation orders would not operate to prevent them from doing so, it is not necessary for me to resolve this question for the purposes of the present proceedings, unless it becomes necessary so to do for the purposes of the

10

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope



Reasons for Judgment  
of his Honour  
Mr. Justice Hope

discretionary defences. As will appear, I have come to the conclusion that I should exercise my discretion in favour of the plaintiff without determining the validity of these orders; if they are indeed valid, that validity would merely reinforce the decision to exercise my discretion in favour of the plaintiff. I have been urged by both parties that notwithstanding these considerations I should decide these difficult questions. I have given much consideration to this request but have come to the conclusion that I should not do so. There is no threat by the defendants to cut the trees down except for the purposes of their mining operations, and if those mining operations are restrained, there is nothing to suggest that the trees will be touched. In those circumstances I think that the determination of these questions should await a case where a decision concerning them is necessary.

As well as claiming that no consent is necessary for their mining operations and that the tree preservation orders which the plaintiff has purported to make are invalid, the defendants rely upon what they claim to be the laches, acquiescence and delay on the part of the plaintiff as a defence to the plaintiff's claim for relief in this suit. The matters upon which the defendants rely for this

purpose fall into several different categories. In the first place, they rely upon correspondence which took place between the plaintiff and the Department of Mines in respect of the granting of the leases and the conditions to be contained therein. I will not deal with this correspondence in detail, but in respect of each of the four leases the Department of Mines wrote to the Council after each application had been made, asking the Council whether it had any objection to the grant of a lease in satisfaction of the application and, if not, whether it desired the incorporation of any additional special conditions in any lease which might be granted. Most of this correspondence took place before 6th January, 1961 although some of it took place after that date and before 3rd May, 1968. In each case the plaintiff told the Department that it had no objection to the granting of the lease, but except in the case of the application in respect of M.L. 51, it sought the inclusion of some special conditions in the leases.

The second matter upon which the defendants rely is the rating by the Council of each of the relevant areas on the basis that they were mines within the meaning of the Local Government Act. As I have already said, a mine is defined by this Act to include land not only used for a mining purpose

but also land held for a mining purpose, and consequently land which is held under a mining lease is liable to be rated as a mine notwithstanding that no mining operations are being carried on upon the land. Provision is made in s. 153 of the Act for the valuation of a mine which is being worked on the basis of its output, but provision is also made 10 for its valuation in accordance with the Valuation of Land Act, and, in the case of an undeveloped mine or of a mine which is idle or partially idle, by reference to the annual rent.

The defendants lastly rely on what they claim was the knowledge of the plaintiff of the mining operations proposed to be carried on, and in fact carried on, by the defendants upon the land, the expenditure incurred by the defendants in relation to those operations, the failure of the plaintiff 20 to inform the defendants that consent was required for these operations, and its standing by and taking no action whilst expenditure was being incurred in commencing and carrying out these operations. It is necessary in relation to this aspect of the defendants' claim to look somewhat closely at the facts upon which they rely. There is no evidence that the plaintiff knew about what I have held to be the prospecting operations carried out upon the

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

lands, and indeed there is no evidence to establish that the plaintiff had notice of any of the drilling operations carried out on the lands over the years. Of course, even if the plaintiff knew about any of the drilling operations, that knowledge of itself would not establish that the defendants intended to carry out any particular mining operations, or would not apply for consent before they did so. The earliest time at which the plaintiff knew about the proposed mining operations on any of the subject lands appears to have been in 1965. In July, 1965 the President and Councillors of the plaintiff visited the area held by Wyong Minerals, and were given a brochure which bears date 29th July, 1965. In that brochure there is reference to the proposed mining operations of Wyong Minerals both on its Munmorah lands and on what it describes as its Tuggerah leases. It is said in the brochure that mining operations will be carried out upon the Munmorah lands and indeed that they had commenced in June of that year, and that it was anticipated that the Munmorah area would have been mined out and the surface area restored within eight to ten years. It was then said that once the operations at Munmorah had been completed, the Company's intention was to commence dredging operations on the Tuggerah leases.

Nothing further appears to have happened thereafter until 8th March, 1967 when in a letter by the plaintiff to the local manager of Wyong Minerals headed "Preservation of the rain forest at The Entrance North" the plaintiff invited him to attend its next meeting on 23rd March, 1967 and asked him to bring maps with him so that the Council might see clearly the extent of the proposed mining operations of Wyong Minerals on the Entrance North Peninsula. The manager attended this meeting and answered questions concerning the Company's proposals, although at this time he is unable to remember what was said. On 5th April, 1967 the plaintiff again wrote to him stating that it had passed the following resolution:-

"That before any mining is commenced in The Entrance North Peninsula, the Company be asked to formulate its plans for the mining of the area, and then arrange a further conference with the Council to acquaint it with the proposals in detail, and that the Council also confer with Associated Minerals".

The letter went on to say that the Council was concerned as to the exact areas intended to be mined and the effect this would have on the preservation of valuable flora, and stated that if the proposals could be formulated in a more explicit form, with plans showing details of the proposals,

further consideration would be given to the matter in accordance with the resolution.

In November, 1967 a meeting was held on The Entrance North Peninsula between the Minister for Lands, representatives of the defendants, conservationists and others. As a result of this meeting, the defendants caused a map to be prepared showing the areas which they proposed, in due course, to mine, and those which would not be mined. At about this time Associated Minerals was acquiring the capital of Wyong Minerals and its subsidiaries, and it would appear that the precise plans which Wyong Alluvials had made for the mining of its areas were not thereafter proceeded with. At some time during 1968 Mr. McKellar, who is the operations manager of Associated Minerals, went to a meeting of the plaintiff and answered questions about the restoration of land after mining. No details of these matters have been given in evidence, but it is clear enough that nobody on behalf of the plaintiff told him that the plaintiff's consent was required for any mining operations. On 10th July, 1968 a meeting was held between representatives of Associated Minerals and various conservation groups when the problem of the preservation of the rain forest and the angophora forest was discussed. On 18th December, 1968 the

plaintiff wrote to Associated Minerals and asked that it forward at its earliest convenience a plan of The Entrance North Peninsula showing the areas which it proposed to mine, and stated that the plan was required for comparison with another plan prepared by conservationists. On 2nd January, 1969 Associated Minerals wrote to the plaintiff forwarding the plan which the Council had requested, and also a copy of the letter which it had written earlier to the representative of the conservationists. The plan which was enclosed with the letter indicated the area which the conservationists had requested should be preserved (which included the greater part of the four mining leases lying to the west of the Wilfred Barrett Drive), the area upon which the Company proposed that no mining should take place, the area which was available for mining only with the consent of the Minister for Mines on the north-eastern end of M.L. 44, and the area which the Company proposed to mine. On 30th January, 1969 the plaintiff acknowledged receipt of the letter and plan and advised that it was not satisfied with the position and intended to make further representations to the Department of Mines in an endeavour to restrict the proposed mining operations. On the same date the solicitors for Wyong Alluvials wrote

and to mine them during the pendency of the application, subject to the observance, inter alia, of the special conditions which were forwarded with the letters. The letters also gave information to Associated Minerals as to the zoning of the land under the Wyong Planning Scheme Ordinance and stated that the plaintiff's consent should be obtained before the commencement of any mining operations. The conditions which were included with these letters included a condition that the lessee should obtain the consent of the plaintiff to its operations. Application was accordingly made by Associated Minerals for the plaintiff's consent, and this consent was given in May, 1969. The Planning Scheme Ordinance had come into operation on 3rd May, 1968 and in fact the defendants became aware that it had been prescribed shortly thereafter.

10

20

Mining operations in the sense of recovering minerals from the lands commenced in about July, 1969 at the southern end of M.L. 42. These operations were carried on by means of a dredge, the setting up of which commenced in about June, 1969. The dredge floats in water which is held in an excavation, and moves along a pre-planned path as the land is mined. The dredge, which was known as Plant 10/10, came from another area which the



defendants were mining, and its setting up on M.L. 42 cost a considerable amount of money. The dredge worked for a short time on M.L. 42 and then moved southwards to the areas the subject of special lease applications numbers 1614 and 1625 in respect of which the plaintiff had granted its consent to mining. The dredge continued its operations on these areas throughout the rest of 1969, and then turned northwards and recommenced mining on M.L. 42 at some time at the end of 1969 or early in 1970. 10

In September, 1969 a discussion was held by the defendants' representatives with the Council President and officers of the Council concerning the possibility of the setting aside on the defendants' land of an area for the purpose of sewerage and disposal works. The area which the plaintiff sought for this purpose comprised some fifty acres on the western side of M.L.'s 42 and 48 which had not then and still has not been mined, the operations of Plant 10/10 on M.L. 42 being confined to the eastern side of Wilfred Barrett Drive. On 23rd October, 1969 the plaintiff wrote to Associated Minerals asking it to submit plans of its proposed operations in "this area", by which expression was meant the plaintiff's local government area. On 5th December, 1969 Associated Minerals wrote a letter to the plaintiff in 20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

which it described its proposed operations both on the Munmorah leases and on the subject leases which it described as the Tuggerah leases. In respect of the Tuggerah leases it informed the plaintiff as follows:-

"The No. 10 plant currently operating on our SLA 1614 and 1625 is expected to turn northwards shortly and return to ML 42, and then proceed on the northerly path through ML's 42, 48, 51 and 44. This dredge path has been indicated generally on the attached locality plan. This plant will take some 15-20 years to complete this operation, say until some time around 1987-1990. 10

In December 1971 we plan to introduce an additional large plant and position it in the northern end of the leases and on the western side of the main road at the point indicated on the attached plan. This plant is expected to operate for some 15-20 years and complete mining between say 1987-1990". 20

The plaintiff does not appear to have replied to this letter and plant 10/10 continued its operations, entering M.L. 42 some time after 5th December, 1969 and continuing its operations northwards along the eastern side of that lease. In August and September, 1970 there was correspondence between the plaintiff and Associated Minerals concerning the siting on M.L. 51 of a research nursery, this nursery presumably being related to the finding of suitable plants, shrubs and trees for the purpose, inter alia, of restoring land which had been mined on the Peninsula. In February, 1971 there was correspondence 30

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

between the Council and Associated Minerals concerning the establishment of a garbage disposal area by the Council on M.L. 42 in an area which had already been mined. The Company agreed to this proposal and in due course the garbage disposal area was established and is still being used by the plaintiff.

On 22nd July, 1971 the plaintiff purported to 10  
make the first of the tree preservation orders to which I have referred. Associated Minerals learned of this order shortly after it was made. On 26th July, 1971 having read in a local newspaper about the plaintiff's reported unhappiness about its entry into The North Entrance Peninsula west of Wilfred Barrett Drive, Associated Minerals told the plaintiff that it was following the programme which it had earlier submitted to the plaintiff and which provided that a plant would begin operations in The North Entrance 20  
Peninsula west of the road in 1971-1972. This was a reference to the statement in the letter of 5th December, 1969 that in December, 1971 the Company proposed to introduce a large plant on the northern end of the leases on the western side of the road. On 2nd September, 1971 the plaintiff invited the managing director of Associated Minerals to attend a meeting on 9th September to discuss the Company's proposed developments of its leases, and asked him

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

to bring plans showing the dredging proposals in respect of these leases. At about the same time the plaintiff purported to make its second tree preservation order and sent a copy of it to Associated Minerals. The managing director of Associated Minerals attended the Council meeting but nothing came of the discussions. Thereafter, on 6th December, 1971 the plaintiff instituted the present proceedings. 10

In or about July, 1971 Associated Minerals commenced the setting up in a position on M.L. 44 to the west of Wilfred Barrett Drive of a very large plant called plant number 20 which had been brought from another one of its holdings. As in the case of plant 10/10, plant number 20 was floated in water contained in an excavation. It was finally assembled in about December, 1971 but has not commenced any mining operations. Unless restrained by order of the Court, Associated Minerals proposes to use plant number 20 for the purposes of mining firstly on M.L. 44 on the western side of Wilfred Barrett Drive, and thereafter to move it southwards into M.L. 51. In the course of these mining operations the greater part of the angophora forest will necessarily be destroyed. The operations of plant 10/10 have been continued along a strip on the eastern side of M.L. 20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

42 and also along a small area in M.L. 48. In the course of these operations a large amount of the natural cover including trees has been destroyed, and work of restoration has commenced in the areas where mining has been completed. This restoration includes the recontouring of the sand, the restoring of its surface of the soil which had been removed, 10 the planting of grasses, and subsequently the planting of suitable trees. There is no reason to believe that the defendants are not taking what steps can be taken to restore an area which has been mined by dredging, but it is apparent that neither the original appearance nor the original natural growth can be restored either at all or at any rate until after the passage of a very great number of years, probably decades. Evidence has been given as to the effect of restoration not only on M.L.'s 42 and 48 20 but also on some of the Munmorah areas where the restoration has had a much longer time to take effect. I am satisfied on the evidence before me that although grasses can be grown with reasonable success to retain the newly-created contours of the sand and soil, the regrowth of anything like the present angophora forest would be quite unlikely, if not impossible. After a considerable time some natural regrowth of trees may commence but this growth would

be sparse, and attempts to create a forest by the planting of new angophora trees on such sand and soil are so fraught with difficulty that the most that can be said is that some of the trees may survive and continue to grow. It would of course be quite impossible, and it has not been suggested, that the rain forest could be reproduced, although the defendants' present plans are to leave unmined a large part of the area on which this forest grows. 10

The defendants claim that at no time whilst the events I have described were taking place did the plaintiff tell them that its consent to mining operations was required and that the acts and omissions of the plaintiff accordingly constitute that laches and acquiescence or delay justifying the refusal of injunctive relief. They claim that the granting of injunctive relief would constitute a great hardship to them and submit that as a matter of discretion the Court should not grant it. 20

I do not think that the actions of the plaintiff in relation to the granting of the mining leases afford any justification for the refusal of injunctive relief. Most of the correspondence that took place in relation to the leases and their conditions occurred before 6th January, 1961 at a time when the plaintiff had no power to prevent mining

on any of the mining leases. There was some correspondence after this time but in the first place it does not appear that it was made known to the defendants or had any bearing on their conduct, and in the second place, it was quite consistent with the compliance by the defendants with the requirements of Part XIII A of the Local Government Act and of Ordinance number 105 before commencing actual mining operations. Again I do not think that the valuation of the leases for rating purposes under the provisions of s.153 of the Local Government Act affects the matter, for the granting of the mining leases would, having regard to the definition of "mine" in s. 4 of the Local Government Act, necessarily result in the application of the provisions of that section. 10

The other matters I have referred to require some closer consideration. The facts I have described establish that both before 3rd May, 1968 and after that date the plaintiff knew that at some time in the future the defendants proposed to mine the lands. In January, 1969 it was given a map showing the areas which it was proposed to mine and the areas which it was proposed not to mine, and at other times had discussions and correspondence which assumed that the defendants would be mining at some 20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

time in the future. It is claimed by the defendants and it is not disputed by the plaintiff, that at no time prior to the assembling of Plant 10/10 on M.L. 42 in June, 1969 did the plaintiff tell the defendants that they would have to obtain a development approval before commencing mining operations. After the commencement of the mining operations in the middle of 1969 the plaintiff from time to time indicated its dislike of the operations but took no positive step to stop them, unless the issuing of the tree preservation orders can be so regarded, until the institution of the present proceedings in December, 1971. In December, 1969 the defendants gave the plaintiff a reasonably explicit statement of their intentions in relation to mining, including notice of their proposal to set up a new plant on M.L. 44 in December, 1971. Again, the plaintiff did not tell the defendants that any consent was required for these operations, and took no action other than the action I have described.

Although the matters I have referred to were established, they are of course only one part of the whole picture. It is not established that the plaintiff had any knowledge of the drilling operations carried out by the defendants, and there is no evidence that the plaintiff knew of the steps that



Reasons for Judgment  
of his Honour  
Mr. Justice Hope

were being taken to assemble plant 10/10 before it commenced mining operations on M.L. 42, or knew that plant number 20 had been or was being assembled. It had of course been told that the plant would be there in December, 1971 and since it is situated not very far from Wilfred Barrett Drive, no doubt some of its officers noticed what was going on at some time in the course of its construction. However whatever may be the validity of the tree preservation orders which the plaintiff has purported to make, the defendants knew from July onwards that the plaintiff was purporting to take action under the Planning Scheme Ordinance which, if valid, would be effective to prevent mining operations without the plaintiff's consent in the areas to which the orders were expressed to apply. Lastly, there is no suggestion that the plaintiff held out to the defendants that it had in fact consented to their operations; the defendants claim that they always believed, and at the hearing made submissions in support of this belief, that they were entitled to carry on the operations without any consent on the part of the plaintiff, and the most that they can claim is that this belief was fortified by inactivity on the part of the plaintiff and by its failure to claim that consent was required.

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

If the defendants may not, without the consent of the plaintiff, carry on the mining operations which the plaintiff complains of, then the Attorney General might bring proceedings to restrain the defendants from carrying on those operations. By virtue of s.587 of the Local Government Act, the plaintiff is entitled to take such proceedings in its own name and is to be deemed to represent sufficiently the interests of the public. As in the case of proceedings by the Attorney General, it is an important circumstance that the plaintiff is bringing these proceedings to protect the interests of the public and not simply to protect some private interest of its own. As is established in the case of proceedings by the Attorney General, the grant of injunctive relief in proceedings at the suit of a council is discretionary notwithstanding that it represents the public interest, and the various discretionary remedies such as are relied upon by the defendants in the present case are available in answer to the Council's claim. However the exercise of the Court's discretion is subject to some special considerations in such a case because of the very fact that it is the public interest which the proceedings are designed to protect. Moreover, the effect of conduct which in other cases might involve an

10

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

implicit consent and thus found a defence based on the doctrine of equitable estoppel by acquiescence may be affected by the circumstance that the relevant statute or delegated legislation may prohibit the giving of consent, or may circumscribe the way in which it may be given; cf. Brickworks Limited v. Warringah Corporation, (1963) 108 C.L.R. 568 at page 579. Thus clause 6 of Ordinance No. 105 requires applications for interim development approval to be made in writing, and clause 19 of the Shire of Wyong Planning Scheme Ordinance contains a similar provision. In those circumstances, as was pointed out by Else-Mitchell, J., in Ku-ring-gai Municipal Council v. Arthur H. Gillott Pty. Ltd., (1968) 15 L.G.R.A. 116 at pages 122-123, it is difficult to envisage how the relevant equitable doctrine can be invoked, for the person invoking it cannot have been misled into believing that he had been given the consent which he requires to make his conduct legal. It is otherwise of course where he has made some kind of application for consent to the Council. The difficulty of applying the doctrine arises a fortiori where the statute prohibits absolutely the acts which it is sought to restrain, as the Ordinance does in the present case in respect of mining on the Residential "A" zone land. Again, although a

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

council may be estopped from denying that it has given consent: Brickworks Limited v. Warringah Corporation (supra), a representation by a council that no consent is required by the relevant law cannot found an estoppel: Southend-on-Sea Corporation v. Hodgson (Wickford) Ltd., (1962) 1 Q.B. 416: Brickworks Limited v. Warringah Corporation (supra) at page 577. It is upon an implicit representation of this character that the defendants seek to rely in the present case, to found a defence of acquiescence, and, as it seems to me, this they cannot do.

10

Although the defendants are thus not entitled to rely upon acquiescence, I do not think they are disentitled by any relevant statutory provision from raising and seeking to rely upon the other grounds for the exercise of the Court's discretion in their favour. An example of the exercise of the discretion in the way in which the defendants seek to have it exercised in the present case is to be found in Attorney General v. Greenfield, (1961) 6 L.G.R.A. 230. In that case land within the area of the Sydney City Council was subject to a Residential District Proclamation made under s. 309 of the Local Government Act. The defendants owned land on which various buildings were erected and from time to time they applied to the Sydney City Council under the County

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

of Cumberland Planning Scheme Ordinance for its consent to various works of alteration and rebuilding. The Council gave this consent, apparently in a belief that it was not precluded from doing so by reason of the provisions of the Residential District Proclamation. In proceedings to restrain the continuance of the work of reconstruction in respect of some of these buildings and to require the demolition of some work that had recently been carried out, Myers, J., at first instance, held that the Council was precluded from giving its consent to these buildings and works by reason of the provisions of the Residential District Proclamation, but that as a matter of discretion he would not grant an injunction. In upholding this decision, the Full Court said, at pages 236-7:-

" In our opinion the decision of Myers J. on this aspect was correct. Where the Attorney General seeks an injunction to protect valuable public rights created by statute, as in Part XI and S. 309 of the Act, Hornsby S.C. v. Danglade, (1928) 29 S.R. (N.S.W.) 118; 9 L.G.R. (N.S.W.) 37, the relief sought is refused only in exceptional circumstances: A.-G. v. Bastow, (1957) 1 Q.B. 514; A.-G. v. Smith, (1958) 2 Q.B. 173; A.-G. v. Harris, (1960) 3 W.L.R. 532; (1961) 1 Q.B. 74. It may be observed that all these cases are entirely distinguishable on the facts from the present case, and we cite them only for the principles stated. However, it is going too far to say that once a breach of statute has been proved the Court must order an injunction or at least ought to do so because the Attorney General has brought the action in the exercise of his

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

discretion. Although the bringing of the action is a matter for the discretion of the Attorney General, the decision of it is for the Courts after hearing both sides, an advantage which the Attorney General lacks: A.-G. v. Birmingham Tame and Rea District Drainage Board, (1910) 1 Ch. 48. See also a case in our own Courts, A.-G. v. North Shore Gas Co. Ltd., (1929) 10 L.G.R. (N.S.W.) 30. It is clear that a discretion was vested in Myers J. He could consider the relative convenience and hardship of the parties, the mistake, if such there was, of the legal rights of the defendants, and the de facto several consents and approvals of the City Council. In our opinion Myers J. made no error in the exercise of his discretion. We come to the same conclusion."

10

20

This exercise of the discretion by Myers, J. was based upon the conduct of the City Council in purporting to give its consent to what was done, the acts of the defendants in reliance thereon without any intention to break the law, the hardship which the granting of injunctive relief would cause to the defendants, and the absence of evidence of any specific harm that would be caused by the erection of the buildings as opposed to any building that might have been permitted "beyond the general harm which may be said to be caused by a breach of the residential proclamation".

30

In the case of the operations of Plant 10/10 there was considerable delay from the time when the plaintiff became aware of these operations until the institution of the present suit. The defendants

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

were of course aware of the existence of the Planning Scheme Ordinance, as was the plaintiff, but the defendants claim that they believed that no consent was necessary. This may seem difficult to reconcile with the fact that they applied in May, 1969 for consent in respect of the two small southern leases, but this may fairly be explained by the circumstance that the Minister had imposed conditions in respect of these areas that consent be obtained, whilst no such conditions appeared in the other leases. It is difficult to understand why the plaintiff did not tell the defendants that consent was required for the mining operations of which they were given notice unless it did not realise that that consent was necessary. There is no direct evidence on the matter, but I think that it is more probable than not that the plaintiff did not appreciate that consent was necessary for the various mining operations until some time in the second part of 1971. The granting of injunctive relief in respect of Plant 10/10 will cause hardship to the defendants, for the installation of that plant cost a considerable amount of money, and although no doubt a substantial return has been obtained from the minerals already extracted, it certainly does not appear that the whole of the defendants' expense

10

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

has been recovered. The position is somewhat different in relation to plant number 20 and although the plaintiff learned that this plant was in the course of construction some while before December, 1971 the evidence does not in my opinion justify a finding that the plaintiff was guilty of any undue delay in taking the present proceedings in relation to this plant or its operations. Moreover, although the cost of assembling the plant was great, and the defendants will suffer hardship if injunctive relief is granted, they certainly realised from July, 1971 onwards that the plaintiff was seeking to control mining, and, whether its purported tree preservation orders were valid or not, that it was endeavouring to take steps to prevent it without its consent being obtained. 10

As it seems to me, a most material circumstance in relation to any discretionary defence upon which the defendants seek to rely is the public interest in the preservation of the angophora forest, the rain forest, and indeed the general appearance of the land in the subject mining leases. Without a doubt the forests on these lands add greatly to the beauty of this area, and the evidence also establishes that apart from their aesthetic value, they are of great public value for educational and 20



Reasons for Judgment  
of his Honour  
Mr. Justice Hope

scientific purposes. They cannot be replaced, and the attempts at restoration which on any view of the matter would take a very long time to come to any kind of fruition, will in all probability be quite unsatisfactory. In these circumstances, I have no doubt that in the case of the proposed operations of plant number 20, I should exercise the Court's discretion in favour of the plaintiff and grant injunctive relief. The question is somewhat more difficult to resolve in respect of the operations of plant number 10/10 for here there has been a long period of standing by and taking no positive steps to restrain the illegal mining operations. However, taking all the circumstances into account including the public interest to which I have referred, I have come to the conclusion that in this case also I should exercise my discretion in favour of the plaintiff and grant injunctive relief. It has been submitted for the defendants that instead of granting unconditional injunctive relief, I should consider allowing the defendants to carry on mining operations to some limited extent, that is, in a limited area and possibly for a limited period of time. As it seems to me, this is a matter involving important town planning considerations with which the plaintiff, and any appellate tribunal on appeal

10

20

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

from it, is more fitted to deal than this Court.

The injunctive relief will prohibit the mining operations without the consent of the plaintiff, and if an application for consent is made to it, the plaintiff will no doubt deal with the matter in accordance with the provisions of the Local Government Act and the Planning Scheme Ordinance. Whilst I think that in the case of plant 10/10 I should suspend the operation of any injunction for a short period, I do not think I should otherwise limit the injunctions which I propose to make.

10

In coming to these conclusions as to the way in which I should exercise my discretion, I have not found it necessary to consider the plaintiff's tree preservation orders except to take into account the fact that the plaintiff had purported to exercise the power which clause 44 is expressed to confer upon it, and that the defendants had notice of what the plaintiff had done in this regard. If clause 44 is valid, and any of the orders were properly made under it, my decision as to discretion could only be fortified, and accordingly it is not necessary for me to decide that question.

20

Having delivered these reasons, I propose to hear submissions as to the declarations and orders I should make, including submissions as to the time

Reasons for Judgment  
of his Honour  
Mr. Justice Hope

for which the injunction in relation to M.L.'s 42,  
48 and 51 should be suspended.

I certify that this and the preceding 78 pages are  
a true record of his Honour's Reasons for Judgment.

M. Schwebel  
Associate.  
9/5/72.

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
IN EQUITY )

No. 2083 of 1971

BETWEEN: WYONG SHIRE COUNCIL

Plaintiff

AND: ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED.

Defendants.

THURSDAY the eighteenth day of May One thou- 10  
sand nine hundred and seventy-two.

THIS SUIT coming on to be heard on the twenty-first,  
twenty-second, twenty-third, twenty-fourth and  
twenty-eighth days of February last and the second  
and ninth days of March last and the ninth day of  
May last and this day before the Honourable Robert  
Marsden Hope a Judge of the Supreme Court sitting  
in Equity WHEREUPON AND UPON HEARING READ the plead-  
ings filed herein AND UPON HEARING the oral evidence  
of Joseph Pinter John Patrick Minogue, John Bruce 20  
McKellar, Sydney John Griffith, Frank Archibald  
Close, Richard Charles Nolan, Thomas Wesley Thomas  
and Andrew Archibald Wells called on behalf of the  
Defendants and of Stephen Clark, Flora Turton, Bruce  
McKenzie, Alan Strong, Robert Thomas Keating, Hugh  
Malcolm Chalmers, and John Steinke called on behalf  
of the Plaintiff in reply AND UPON READING AND

EXAMINING the exhibits put in evidence on behalf of  
the Plaintiff and marked "A", "B", "C", "D", "E",  
"F", "G", "H", "J", "K", "L", "M", "N", "O", "P", 30

Decree

"Q", "R", "S" and "T" respectively and the exhibits put in evidence on behalf of the Defendant and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", and "33" respectively AND UPON HEARING what was alleged by Mr. Wilcox of Counsel for the Plaintiff and by Mr. Milne of Queens Counsel with whom was Mr. McLelland of Counsel for the Defendants AND UPON NOTING that it is admitted by the plaintiff that the documents comprising exhibit "A" were received by the plaintiff on the ninth day of January one thousand nine hundred and sixty-one THIS COURT DOTH DECLARE that the use of the land contained in Portion numbers 44, 51, 48 and 42 Parish of Wallarah, County of Northumberland or any part thereof for the purpose of the mining of rutile, zircon or associated or similar minerals or for the purpose of making any roads or of constructing any pipelines or powerlines or of constructing any pump station or of constructing any levee bank thereon without the prior consent of the Plaintiff is in breach of the Shire of Wyong Planning Scheme Ordinance and illegal AND THIS COURT DOTH ORDER that the Defendants and each of them their servants and agents be restrained from using or permitting the use of the land contained in Portion numbers 44, 51, 48, or 42 Parish of Wallarah, County of

Decree

Northumberland or any part thereof for the purpose of the mining of rutile, zircon or associated or similar minerals or for the purpose of making any road or of constructing any pipeline or powerline or of constructing any pump station or of constructing any levee bank thereon without prior consent under the Shire of Wyong Planning Scheme AND THIS COURT DOTH FURTHER ORDER that the operation of so much of the Injunction next hereinbefore referred to as would prevent the operation of the dredging plant known as 10/10 or any substituted equipment of a similar nature presently situated upon ML 48 and activities ancillary thereto, in accordance with the dredge path shown on the plan which is Exhibit 33, be suspended until the expiration of three (3) months from the date hereof or until the expiration of such further time as may be allowed upon application pursuant to the leave herein reserved AND THIS COURT DOTH RESERVE LIBERTY to the Defendants and to each of them to apply for a further suspension of the Injunction granted above in relation to the dredging plant known as 10/10 or the substituted equipment referred to above in the event of an appeal being pending in respect of this decree or of any development application or development appeal being then outstanding subject to not less than fourteen (14) days notice of such application being given to the Plaintiff AND THIS COURT DOTH FURTHER

Decree

ORDER that it be referred to the Deputy Master and Registrar in Equity or Deputy Registrar or Chief Clerk in Equity to tax and certify the costs of the Plaintiff of this suit including the costs of all interlocutory applications AND that such costs when so taxed and certified be paid by the Defendants to the Plaintiff or its Solicitors within fourteen (14) days after service upon the Defendants or their Solicitors of an office copy of the Certificate of such taxation AND all parties are to be at liberty to apply as they may be advised.

10

PASSED this twenty-third day of June 1972.  
G.W.

ENTERED same day.  
AM.

(Sgd.) (L.S.)  
G. WHALAN  
DEPUTY REGISTRAR IN EQUITY.

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
IN EQUITY )

No. 2083 of 1971

BETWEEN: WYONG SHIRE COUNCIL

Plaintiff.

AND: ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED

Defendants.

FRIDAY the twenty-sixth day of May One thou- 10  
sand nine hundred and seventy-two.

UPON MOTION made this day before the Honourable  
Robert Marsden Hope a Judge of the Supreme Court of  
New South Wales sitting in Equity by counsel on be-  
half of the defendants Associated Minerals Consoli-  
dated Limited and Wyong Alluvials Pty. Limited in  
pursuance of Notice of Motion filed herein the  
twenty-third day of May instant WHEREUPON AND UPON  
HEARING READ the said Notice of Motion and the  
affidavit of John Bruce McKellar sworn the twenty- 20  
fifth day of May instant and filed herein on behalf  
of the defendants AND UPON HEARING what was alleged  
by Mr. M.H. McLelland of Counsel for the defendants  
and by Mr. Murray Wilcox of Counsel for the plain-  
tiff THIS COURT DOTH ORDER that the defendants be  
and they are hereby at liberty to appeal to Her  
Majesty in Counsel from the Decree made herein on  
the eighteenth day of May one thousand nine hundred  
and seventy-two on the following conditions namely:

Order granting condi-  
tional leave to Appeal  
346. to Frivy Council



Order granting conditional leave to Appeal to Privy Council

- (a) That the defendants within one month from the date of this Order give security to the satisfaction of the Master in Equity in the amount of \$1,000 for the due prosecution of the said Appeal and the payment of all such costs as may become payable to the plaintiff in the event of the defendants' not obtaining an Order granting their final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the defendants to pay the plaintiff's costs of the Appeal (as the case may be). 10
- (b) That the defendants do within 14 days from the date of this Order deposit with the Master in Equity the sum of \$50.00 as security for and towards the costs of the preparation of the Record for the purposes of the said Appeal. 20
- (c) That the defendants do within three months from the date of this Order take out and proceed upon all such appointments and take all such other steps as may be necessary for the purpose of settling the index to the said Record and enabling the Master in Equity to certify that the said index has been settled and that the conditions hereinbefore referred to have been duly performed.

Order granting conditional leave to Appeal to Privy Council

Order granting conditional leave to Appeal to Privy Council

(d) That the defendants do obtain a final Order of this Court granting them leave to appeal as aforesaid.

AND THIS COURT DOTH FURTHER ORDER that pending the said Appeal the execution on the said decree shall be suspended to the extent that the same would be inconsistent with any further suspension of the injunction therein contained which may be granted by this Court pursuant to the leave to apply for such further extension reserved to the defendants in the said decree AND THIS COURT DOTH FURTHER ORDER that the costs of all parties of this Application and of the preparation of the said Record and of all other proceedings hereunder and of the said final Order do follow the decision of Her Majesty in Council with respect to the costs of the said Appeal or do abide the result of the said Appeal in case the same shall stand or be dismissed for non-prosecution or be deemed so to be subject however to any Orders that may be made by this Court up to and including the said final Order or under any of the Rules next hereinafter mentioned that is to say Rules 16, 17, 20 and 21 of the Rules in the Order in Council of the second day of April 1909 regulating Appeals from this Court to Her Majesty in Council AND THIS COURT DOTH FURTHER ORDER that the costs

Order granting conditional leave to Appeal to Privy Council

Order granting conditional leave to Appeal to Privy Council

incurred in New South Wales payable under the terms hereof or under any Order of Her Majesty in Council by any party or parties to any other party or parties be taxed and paid to the party or parties to whom the same shall be payable AND THIS COURT DOTH FURTHER ORDER that so much of the said costs as become payable by the defendants under this Order or any subsequent Order of this Court or any Order made by Her Majesty in Council in relation to the said Appeal be paid out of any moneys paid into Court as security as aforesaid so far as the same shall extend AND THIS COURT DOTH FURTHER ORDER that after such payment out (if any) the balance (if any) of the said moneys be paid out of Court to the defendants AND all parties are to be at liberty to apply as they may be advised generally and in particular in relation to the terms hereinbefore fixed for the doing of any act.

10

20

PASSED this twenty-first day of June 1972.

G.W.

ENTERED same day.  
AM.

(Sgd.) (L.S.)  
G. WHALAN  
DEPUTY REGISTRAR IN EQUITY

Order granting conditional leave to Appeal to Privy Council

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
EQUITY DIVISION )

No. 2083 of 1971

BETWEEN: ASSOCIATED MINERALS CONSOLIDATED LIMITED and WYONG ALLUVIALS PTY. LIMITED

Appellants (Defendants)

AND: WYONG SHIRE COUNCIL

Respondent (Plaintiff)

FRIDAY the fifteenth day of December One thousand nine hundred and seventy-two. 10

UPON MOTION made this day unto this Court before the Honourable Robert Marsden Hope a Judge of the Supreme Court sitting in Equity by counsel on behalf of the Appellants (Defendants) Associated Minerals Consolidated Limited and Wyong Alluvials Pty.

Limited WHEREUPON AND UPON HEARING READ the Order made herein the twenty-sixth day of May last granting conditional leave to appeal and the Certificate of the Registrar in Equity dated the seventh day of 20 November last of due compliance on the part of the Appellants (Defendants) with the terms and conditions imposed by the said Order filed herein AND UPON HEARING what was alleged by Mr. McLelland of Counsel for the Appellants (Defendants) and by Mr. Beaumont of Counsel for the Respondent (Plaintiff) Wyong Shire Council THIS COURT DOTH GRANT to the Appellants (Defendants) Final leave to appeal to Her Majesty in Her Majesty's Privy Council from the Decree made

Order granting final  
leave to Appeal to  
350. Privy Council

Order granting final  
leave to Appeal to  
Privy Council

herein the eighteenth day of May One thousand nine  
hundred and seventy-two AND THIS COURT DOTH FURTHER  
ORDER that upon payment by the Appellants of the  
costs of preparation of the Record for the purposes  
of the said Appeal the sum of fifty dollars (\$50.00)  
deposited with the Registrar in Equity as security  
for and towards such costs be paid out of Court to  
the Appellants AND THIS COURT DOTH FURTHER ORDER  
that the costs herein be costs in the Appeal AND  
all parties are to be at liberty to apply as they  
may be advised.

10

PASSED this twelfth day of February 1973.  
A.V.R.

ENTERED same day.  
AM.

(Sgd.)  
A.V. Ritchie  
REGISTRAR IN EQUITY.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
IN EQUITY

No. 2083 of 1971

BETWEEN:

ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED

Appellants (Defendants)

AND:

WYONG SHIRE COUNCIL

10

Respondent (Plaintiff)

IN THE SUPREME COURT OF NEW SOUTH WALES NO. 2083

CERTIFICATE OF REGISTRAR IN EQUITY VERIFYING  
TRANSCRIPT RECORD

I, ALAN VICKERY RITCHIE of the City of Sydney in the State of New South Wales, Commonwealth of Australia, Registrar in Equity of the Supreme Court of the said State do hereby certify that the sheets hereunto annexed and contained in pages numbered one to

inclusive contain a true copy of all the documents relevant to the appeal by the Appellants Associated Minerals Consolidated Limited and Wyong Alluvials Pty. Limited to Her Majesty in Her Majesty's Privy Council from the Decree made in the abovementioned Suit by the Honourable Robert Marsden Hope a Judge of the said Supreme Court sitting in Equity on the eighteenth day of May one thousand nine hundred and seventy two and that the sheets hereunto annexed so far as the same have relation to the matters of the said appeal together with the

20

30

Certificate of Registrar  
in Equity verifying  
Transcript Record

reasons for the said Decree given by the said Judge  
and an Index of all the papers documents and exhibits  
in the said Suit included in the annexed Transcript  
Record which true copy is remitted to the Privy  
Council pursuant to the Order of His Majesty in  
Council on the Second day of May in the year of Our  
Lord one thousand nine hundred and twenty five.

10

IN FAITH AND TESTIMONY whereof I have hereunto  
set my hand and caused the seal of the said  
Supreme Court in its Equitable Division to be  
affixed this *tenth* day of *August*  
in the year of Our Lord one thousand nine  
hundred and seventy three.

(L.S.)  
A. V. Ritchie

REGISTRAR IN EQUITY  
SUPREME COURT OF NEW SOUTH WALES

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
IN EQUITY

No. 2083 of 1971

BETWEEN:

ASSOCIATED MINERALS CONSOLIDATED  
LIMITED and WYONG ALLUVIALS PTY.  
LIMITED

Appellants (Defendants)

AND:

WYONG SHIRE COUNCIL

10

Respondent (Plaintiff)

IN THE SUPREME COURT OF NEW SOUTH WALES No. 2083

CERTIFICATE OF CHIEF JUSTICE

I, the Honourable JOHN ROBERT KERR C.M.G. Chief  
Justice of the Supreme Court of New South Wales  
DO HEREBY CERTIFY that Alan Vickery Ritchie who has  
signed the Certificate above written is the Registrar  
in Equity of the said Supreme Court and that he has  
the custody of the records of the said Supreme  
Court in its Equitable Division.

20

IN FAITH AND TESTIMONY whereof I have hereunto  
set my hand and caused the seal of the said  
Supreme Court to be affixed this *fifteenth*  
day of *August* in the year of Our Lord  
one thousand *nine* hundred and seventy three.

*John R. Kerr (L.S.)*

CHIEF JUSTICE OF THE SUPREME COURT  
OF NEW SOUTH WALES