

Senate Inquiry Submission

Aurukun Bauxite Development Pty Ltd (ABD)

ACN: 169 710 249

Executive Summary

Aurukun Bauxite Development Pty Ltd (ABD), and its parent company Australian Indigenous Resources Pty Ltd (AIR), submits that their joint-venture with the Native Title Holder's representative body Ngan Aak-Kunch Aboriginal Corporation (NAK) presents a break-through proposal in creating a sustainable part-indigenous owned company to mine and market RA315's bauxite deposits.

- The ABD/NAK joint-venture is an innovative but economically viable, and desirable model, for developing mining on Native Title lands. In terms of benefits flowing to the Indigenous community, it sets a new benchmark capable of having a real and positive impact in 'Closing the Gap'.
- Prime Minister Turnbull is advocating that we must use innovation to drive development. He has urged that Indigenous Australians be granted equal opportunity in growing our nation.
- The ABD/NAK joint-venture is 'shovel-ready' to develop this opportunity in Cape York. ABD and NAK have a registered ILUA and CHEMEP covering both the MDL and ML phases. ABD has a highly skilled executive team, supported by Thiess Pty (Australia's largest mining contractor). Private Equity funding of AU\$80 million for phase one of the project is in place.
- Rather than embrace this concept, successive State Governments have done everything in their power to discourage this new dimension in resource development.
- The legislative changes to the Aurukun Provision of the *Mineral Resources Act 1989* (Qld) in 2006 removed their Native Title Rights and every subsequent act of Government followed this pattern of denial.
- NAK has challenged these amendments in the High Court of Australia, and if successful will show the *Mineral Resources Act 1989* (Qld) to be flawed and that all decisions under the Act are therefore also flawed. This will require the Queensland State Government to introduce legislative amendments to reinstate these rights. At the same time, the Queensland Government will be confronted with a decision to remove Glencore's status as Preferred Proponent.
- ABD is making the case in this submission that the whole Bid Process was seriously flawed and the Evaluation Committee was in error on almost every criteria and was not equipped to assess such an innovative concept. The re-activated 24-hour Bid Process was also flawed in that due process was not followed. This reinforces the case for the State Government to remove Glencore from its exclusive position.

With respect, we are asking the Senate Committee to endorse this concept and to press for a review of the way State Governments can better manage Native Title Rights in the future.

Benefits Package

15% NAK will be a registered holder of the Project with 15% profit share.

- The 15% interest in the joint-venture will be granted:
- Free of cost
 - Free of liability
 - Free of loans
 - Non diluting
 - No exposure to loan debt



Board representation

Two elected Native Title Holder representatives will be entitled to Board positions within both ABD and the Operating Company (Alnair). Training and mentoring will be provided on both Boards.



70%

Local Indigenous employment target
(by year 7 of operation)



Funds for local business set up

ABD will assist in identifying and providing business models for local enterprise to support the mining operation (\$1,000,000 across first 5 years)



Funds for Independent legal and tax advice

Independent legal and tax advice will help assist NAK share 15% benefits with the wider community (\$600,000 across first 4 years)

Funds for early training



Specific job training programs will commence to ensure maximum opportunity for local Aurukun People. (\$400,000 over first 4 years)



NAK to receive \$0.20/tonne royalty

from first shipment as an advance on dividend



Aurukun Shire Council will receive \$0.20/tonne royalty

Property upgrades and rentals to be negotiated with ASC.

Figure 1: Summary of ABD benefits package diagram for Indigenous Native Title Holders and Aurukun Shire Council

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Terms of Reference points addressed

In accordance with the Terms of Reference, this submission addresses:

- **item a)** *The economic development of the bauxite resources near Aurukun in Cape York* contained within Section 1; and
- **item c)** *the process for the finalisation of an exclusive Mineral Development Licence Application on this land* contained within Section 2.

Section 1: The Case for ABD

Historical Background

To fully understand the situation in Aurukun, it is important to know the background of this resource and the past Government bid process that has plagued it. Please review this short Appendix A contained on Page 18.

Indigenous Enterprise – More than just a job

ABD entered into joint-venture with the Wik Native Title Holders (represented by NAK) to develop the Aurukun bauxite resources within RA315. The basis of this venture is that ABD brings bauxite mining and marketing skills available in Australia, together with long-term financial partners from SE Asia, to form a joint-venture with the local Native Title Holders (*see diagram, below on page 5*). There are important reasons why this structure is needed to fulfill the common aim of creating a long-term profitable venture in the region.

Firstly, there is an overwhelming need for job opportunities in Aurukun, and this need will increase due to demographic trends and the requirement for improved educational outcomes. It is now recognised across Australia that indigenous ownership brings more than just “a job”. This is partly due to traditional values and to the wider opportunities provided in other roles rather than just entry-level positions. ABD has committed to achieving 70% local indigenous employment within 7 years.

This proposed level of indigenous employment is way ahead of any mine in Australia. The neighbouring RioTinto Alcan mine in Weipa currently boasts Australia's highest indigenous employment record in the mine sector at a mere 22.4%¹ (RioTinto, 2015), despite their 50 years of operation. Bauxite mining is well suited to the indigenous skill set, due to the shallow nature of the deposits, the use of conventional earth moving machinery and the need for continuous revegetation and land management.

Secondly, the Australian owned ABD/NAK joint-venture is basing our company headquarters in Cairns, so that all decisions can be made around the table in Cape York. This is unlike our competitors, who are headquartered in London and Switzerland.

Over the last 15 years, there has been a marked change in the alumina industry. Many new independent alumina refineries have been built to supply the Chinese market; so independent bauxite suppliers, such as our 'stand-alone' structure of ABD, are well placed to capture this market. Unlike iron ore, and many other minerals, there is no benchmarked pricing structure for bauxite. Our 'stand-alone' joint-venture sales will be to third parties, totally transparent, and there will be no question as to the sales price. If a trader or a refinery were part of the mining company, then there would be doubts as to the true value of transfer pricing in off-take arrangements and the associated implications for government royalties.

This joint-venture has been formed to break the pattern in response to the obvious mistakes of the past 40 years of injustice to the Traditional Owners, and to put an end to wasted opportunities by successive Queensland Governments. The meddling of Governments in picking the winner has not allowed Native Title Holders to exercise their Rights. These deposits represent the only opportunity for the Aurukun people to gain economic independence. They have made their decision by signing an Indigenous Land Use Agreement with ABD (September 2014). It is the clearest articulation of their Native Title Rights and interests and is in line with the *Mabo* and *The Wik Decision*. This Agreement is now a fully registered ILUA with the National Native Title Tribunal (Feb 2015) as QI2014/087².

ABD is willing to provide the necessary commitments to Government to move to development now. This area has been the subject of exploration by Comalco, Pechiney, Alcan, the Queensland Government and Chalco. The RA315's intensive 40 years of studies enables ABD to immediately complete infill drilling in the northern area of RA315, and seek to commence mining on a small scale to start operator training and upskilling programs.

The ABD / NAK joint-venture is "shovel ready"

ABD/NAK is the only entity that can fast track the development of this resource. ABD has an exclusive and registered ILUA with NAK that covers both MDL and ML phases, and this is supported by a comprehensive joint-venture Agreement. Traditionally these

¹ RioTinto,. (2015). *Amrun Project: Local and Indigenous participation strategy* (p. 18). Retrieved from www.riotinto.com/australia/amrun-16113

² National Native Title Tribunal (2015). *Register of Indigenous Land Use Agreements Details*. QI2014/087 - Aurukun Bauxite Development ILUA. Retrieve from www.nntt.gov.au

agreements can take years to negotiate, but ABD (via its parent body AIR) has been working with the local indigenous people since 2012 on their Terms, so was well placed to secure this ILUA in 2014. ABD also has funding in place to address all studies required by the MDL, and the first stage of mine development. This activity will bring early training opportunities to upgrade the skill sets of the local indigenous community.

ABD has assembled a team of highly motivated professionals, with more than 50 years of bauxite mining experience, and are supported by Thiess Ltd to provide all necessary technical support.

By utilising the Indigenous Enterprise model, ABD is well positioned to introduce cultural heritage and environmental management plans to a degree that has not been achieved in similar projects in the past. The project will be aided by having a project office in Aurukun and our headquarters in Cairns, where we can make on the spot decisions without the bureaucracy of companies based in Europe or elsewhere.

ABD/NAK has already established a working relationship with RTA next door, and have facilitated access through RA315 for their new *Amrun Project* (previously referred to as South of Embley).

Ownership structure – beneficial interest and operations management

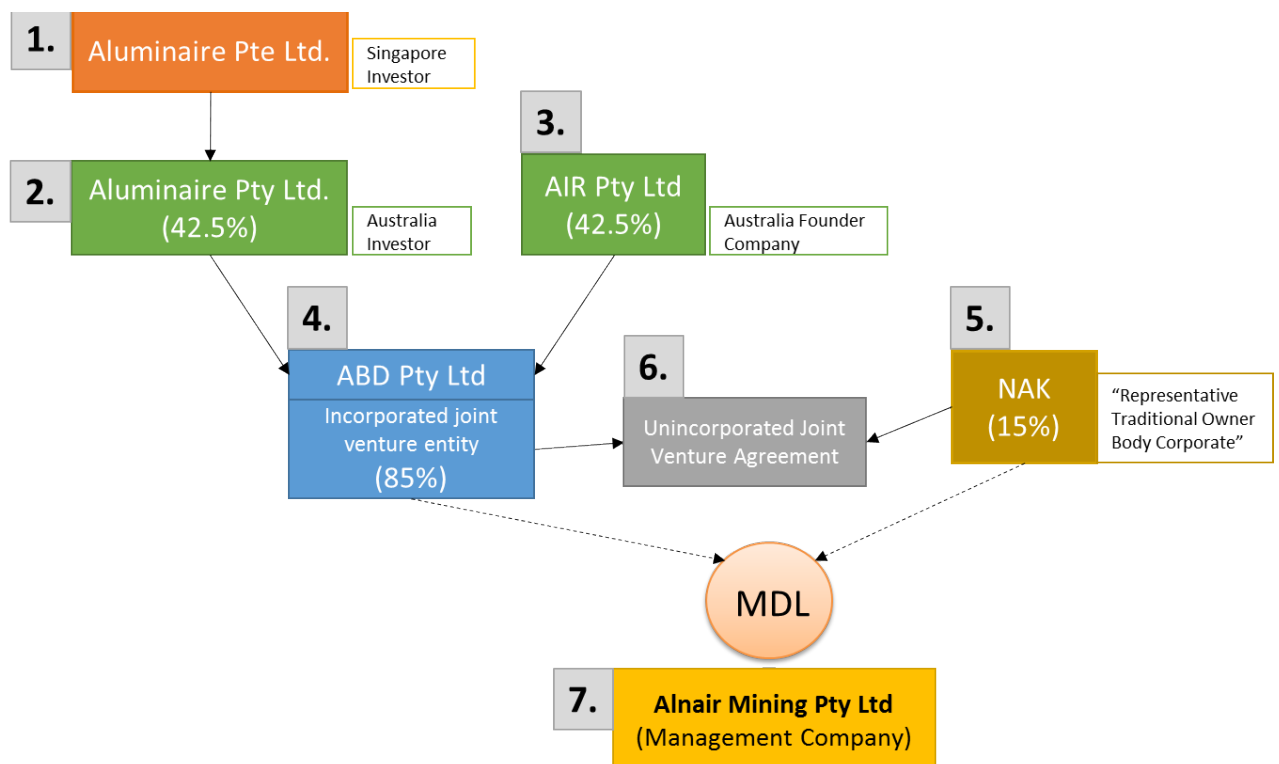


Figure 2: Joint-venture ownership structure

ABD – Financial viability and capacity

Ex-Deputy Premier Seeney, and more recently Queensland's Department of State Development have continued to assert that our proposal was not going to 'happen' because we did not have sufficient financial resources, and our cost estimates were too low.

- State Development and the Evaluation Committee failed to understand that because RA315 was located over areas relinquished during the regional exploration of Comalco and others, it contained resources of a lower economic value. The bauxite deposits are widely separated, land locked, generally thinner and lower grade than the adjacent RioTinto Alcan (RTA formerly Comalco leases).
- The continuity of resources within the RTA area, and the large scale of the operation use a high proportion of fixed plant such as railways, conveyor systems, central processing and dredged port facilities.
- The ABD approach to RA315 was not based on the RTA model, but on similar operations overseas that used a higher proportion of mobile equipment and modular plant, enabling more flexibility to meet the target product quality, while maximizing resource potential. This approach was supported by a massive and long-term over supply of mobile equipment available to either rent or buy in Australia.
- ABD's ILUA with NAK requires that we target 70% of all employees to be local indigenous people within 7 years of operation. This is unprecedented for the resources industry in Australia, and a high use of mobile equipment supports this target.
- The ABD proposal also brings the successful use of barges in the Gulf of Carpentaria to load ships offshore as a means of avoiding the creation of dredged port facilities and the associated high costs.
- The lack of any workshop opportunities with the Evaluation Committee led to their erroneous conclusion that our project cost estimates were under stated by 50% (*Refer to Appendix B on page 23*). An error of this magnitude could only occur if they were contemplating the replication of some of RTA's infrastructure.
- The Evaluation Committee also determined that the AIR/ABD proposal was not bankable. Yet, within 3 months of the bid closing with no award, AIR/ABD – with the encouragement of ex-Deputy Premier Seeney, signed a legally binding Investment Agreement with private equity funders. This initial equity of AU\$80million covers the budget for initial requisite infrastructure (largely access roads and accommodation), drilling and studies leading to the granting of a Mining Lease (ML). The Investment Agreement was made available to State Development on 2nd July 2014, and later supported by a prime bank letter.
- The private equity investors have a background in mining, processing and associated barging operations. They were also recipients of a Northern Territory Export Achievement Award in 2003.

- When the MDL is awarded to ABD, the share structure of the ABD joint-venture will be: AIR 42.5%, private equity funders 42.5%, and NAK 15%. Further funding will be facilitated by a partial equity sell-down by AIR and debt funding to achieve a total investment of up to \$400 million for the initial operation.
- The 15% free carried, and non-diluting interest by NAK requires the use of long-term private equity investors, rather than stock market listing as a means of funding.
- The long-term nature of the deposit (estimated mine life of approximately 70 years) is attractive to equity and debt funders, and underwrites a sustainable economy for the community of Aurukun.

Implications

- The Evaluation Committee did not understand that ABD's proposal was a game changer in lowering project costs. (*Refer to Appendix B on page 23*)
- Their assessment of the bankability of our proposal was in error, as proved in a matter of months.
- Queensland State Development has not understood that the RA315 resource needs a lower capital cost initiative, or the necessary economic outcome to be provided for NAK and the community.

Conclusion

The Evaluation Committee and State Development did not wish to discuss at any time the reasons underlying our proposal. They relied heavily on consultancy companies, who apparently had little understanding of the commercial realities of an alternative approach.

Section 2: The Bidding Process

Assertions by the Government and Queensland State Development to bypass NAK's Native Title Rights in the bidding process have no basis in law.

- After the exit of Chalco in 2011, NAK and its potential joint-venture partner AIR met with the Queensland Government. The Coordinator General then advised NAK at a meeting in Brisbane in 2011 that they had to elect whether they wanted to participate in the Government's bid decision making process **OR** 'partner in a mining venture'. This was explained on the basis that there would be a conflict of interest if it wished to participate in the selection of a Preferred Proponent. Such conflicts of interest can be accommodated in a number of ways and it was up to the Government to achieve a workable solution to this problem. **One such solution was for State Development and NAK to agree on certain pre-conditions before the bid. Failure to meet these pre-conditions, would mean that there would be no award for Preferred Proponent status.** Instead, they chose a solution that disregarded significant rights of the Wik and Wik Waya People under the *Aboriginal Land Act 1991* (Cth) and hard fought Native Title Rights won in a series of land mark decisions handed down by the Federal Court from 2000 – 2012. Instead, the Queensland Government chose to ignore such rights and rely on the Aurukun Provisions which did more than just suspend the rights of the Wik and Wik Waya People, but took away rights that are available to every other person in Queensland. Compared to 228 years ago when the Crown declared Australia 'Terra Nullius' and the grave injustices that followed, did the Coordinator General reflect that the same pattern of behavior was playing itself out many years later upon the Wik and Wik Way People?
- **The Glencore bid was non-compliant in that it had no Minimum Benefits Package for NAK and the Aurukun Shire Council, which was the number one criteria of the bid process set by State Development. NAK had every right to expect that if this condition was not met, there would be no award of Preferred Proponent to Glencore.**

Implications

It is alarming that a senior Government official such as the Coordinator General delivered such an ultimatum to one of the most disadvantaged groups in the country. The then Mayor of Aurukun Council '*Old man Pootchemunka*' was extremely troubled by this, as he and others had seen the Government act as Masters most of their lives. Yet they had witnessed the wasted years of Pechiney, and more recently the whole Chalco debacle, and they wanted to have a say in their own future. The Mayor and NAK decided, despite the Coordinator General's demands in 2011, that they were determined to push ahead to be joint owners of any new mining on RA315.

The conflict of interest grounds, claimed by State Development and used to totally exclude NAK from setting reasonable bounds in the tender process, showed a complete disregard for the Indigenous Native Title Rights held in this country.

Broken promises and a discriminatory and flawed tender process.

Timeline of events

5th September 2012 – A video recording was openly taken at a meeting in Aurukun between the Deputy Premier and Minister of State Development, Jeff Seeney, and Indigenous representatives of the Wik Native Title Holders. This video captured Seeney promising that he was “not going to put the leases out to tender” (to give NAK time), and that there would be “no drop dead dates”. Seeney was recorded saying that he would report to Premier Newman and Cabinet that the Traditional Owners needed time to present their case for ownership, to make progress on their plans, and to prepare their presentation (vimeo.com/nakpbc/seeneymeeting).

16th September 2012 – Just two weeks later, Minister Seeney announces the unveiling of the Government plans to “go to market and seek fresh expressions of interest” without advising the Traditional Owners of his reversed decision, and failed to give them the appropriate time to build their proposal. The formal announcement of the new International tender process was announced 27 November 2012, again without any advice to NAK.

7th November 2012 – AIR were advised (*Refer to Appendix C, item 1 on page 40*) of the **Government’s introduction of probity restrictions**, via NAK’s Contact Officer Phil Hunter. **These had the immediate effect of severely limiting NAK from continuing to communicate with their joint-venture partner AIR during the tender process. This clearly discriminated against the proposed AIR joint-venture.** So by now they had lost their Native Title Rights (removed by Coordinator General) and ‘communication rights’ with their potential partner (removed by introducing these anachronistic probity restrictions without real explanation). **These decisions were alarming, and questioned the fairness and the future outcomes of the tender process.**

9th July 2013 – A pre-bid assessment committee examines the joint-venture arrangement and seeks clarification on the funding of the 15% full carried non-diluting interest of the Native Title Holders. It was clearly stated by AIR during the meeting, that there is to be no financial liability for the funding of the joint-venture loan debt. Discussions with Treasury Officials after the meeting confirmed that they were satisfied with the terms of the joint-venture in this respect.

11th March 2014 – After the surprise closure of the bid process, resulting in no award, a debrief to AIR advised a major perceived weakness in our bid was the liability of the Native Title Holders to the joint-venture debt. This and other perceived weaknesses in our bid have proved to be wrong, hence putting in question the capability of the Evaluation Committee. (*Refer to Appendix B on page 23*).

April/May 2014 – Separate meetings took place, with both the Premier and Deputy Premier. Attendees included John Benson representing AIR and members of the Cape York Land Council, Balkanu and Cape York Partnership. AIR was encouraged to revise and submit an ‘enhanced proposal’ expanding on: **financial** capacity: **technical** capacity: and additional **evidence of support from Indigenous Land Ownership** and the Aurukun community. In response: ABD was formed: negotiations with private equity financiers led to the completion of a legally binding Investment Agreement: the updating of correspondence with Thiess Pty Ltd evidencing the availability of comprehensive technical support: and evidence of a detailed Termsheet for an Indigenous Land Use Agreement. Mr. Nick Stump accepted the appointment as Chairman of ABD and a comprehensive organisational chart was prepared demonstrating ABD’s technical and executive capacity.

3rd July 2014 – At the meeting with Ex-Deputy Premier Seeney to present the revised AIR/ABD proposal, it became clear that the Minister did not wish to hear our presentation, rather he was dismissive of our case, and sought to sidetrack us by offering an exploration lease to a small proportion of RA315 as a way of making us go away. This option was not only economically unviable, but the Chairman of Cape York Land Council, Mr. Richie ah Mat warned the Minister that splitting the lease had the potential of dividing the Aurukun community and the Land Owners. The Minister instructed ABD to seek advice from The Aurukun Project Director Graeme Albion on the process going forward. (*See Appendix C, item 1, on page 40 for meeting notes*).

30th July 2014 – An email from the Director General of State Development Mr. David Edwards, following a meeting with him on the 14th of the month, confirmed that the Department was carefully considering the process to select the Preferred Proponent to ensure fairness and equity to all parties. However, the email states: “I expect that we will be in a position to advise you of the process to be used in the coming weeks”. No action was ever taken to advise ABD or AIR of any new process. (*See Appendix C, item 3, on page 43, for email correspondence*).

6th August 2014 – A meeting took place between ABD and Mr. Graeme Albion. During this meeting Mr. Albion confirmed that there was no formal process in place. He had received no instruction, but that Minister Seeney had full discretion over future actions.

28th August 2014 – **Mr. Seeney announced³ that the Government had appointed Glencore International AG as the Preferred Proponent.** This press release refers to an improved offer from Glencore in terms of timing and benefits. But on the same day ABD received notification from Mr. Albion that the Bid process had been re-opened and Glencore had been awarded Preferred Proponent on the basis of its original proposal. **This communication referred to the award to Glencore being based on the original tender document.** (*See Appendix C, items 4 and 5, on pages 45 and 46, for copies of the Government letters to AIR and ABD regarding this announcement*).

There are a number of issues emanating from this bid process as follows:

³ Deputy Premier, Minister for State Development, Infrastructure and Planning The Honourable Jeff Seeney, (2014). *Government to drive for community benefits from Aurukun mine*. Retrieved from <http://statements.qld.gov.au/Statement/2014/8/28/government-to-drive-for-community-benefits-from-aurukun-mine>

- Mr. Seeney's press release clearly stated that Glencore had improved its offer, and this conflicts with Mr. Albion's assertions;
- Why was ABD/AIR, the only other qualified tenderer, not able to submit a final offer or to be advised of the new process?; and
- Was the original tender process re-opened and closed to avoid judicial review, which the Government enjoyed under that regime?

In a radio interview with Mr. Seeney (*15th November 2014, ABC Brisbane*), he clearly stated that the re-opening of the original competitive bid process was merely "a technical matter". We leave the Senate Committee to judge that such an abuse of process to that hides behind a lack of judicial oversight, was because the whole process was framed to deny the Native Title holders their rights under law. This destroyed ABD/AIR's credibility at every stage of the process. We are presenting the case for constructive denial of Native Title Rights and broken promises under the protection of no judicial review.

Implications

ABD/AIR had again been discriminated against in not being able to present its final offer, and a repeat of the abuse of process that started in the 2011 Coordinator General's decision to exclude NAK from the right to negotiate minimum conditions, if NAK elected to participate in the Bid process as a potential part-owner. Glencore's bid was non-compliant in providing no real Minimum Benefit's Package to NAK and the Aurukun Shire Council, so how could the Government brush aside its number one Bid criteria?

At the date of this submission, no Minimum Benefits Package has been presented to NAK by Glencore in line with the Government's Bid Requirements. The latest communication NAK's ORIC officer received from Glencore (Feb, 2016), indicates that Glencore has only discussed "proposed principles" and their current position is that a meeting is required to seek "an agreement on the process for further discussion and negotiation".

Conclusion

From the beginning, the inclusion of ABD/AIR in the tender process was prejudiced. At every stage when perceived omissions in our bid had been rectified, a new barrier would emerge without the opportunity for us to address this until in desperation, the final decision was made under protection from judicial review.

Successive State Governments continue to contrive situations, which support Glencore and further disadvantages the Native Title Holders rights.

Timeline of events

19th Sept 2014 - An exclusive ILUA between ABD and NAK was executed. NAK acts as agent representative for all the Native Title Holders of the Wik Determination areas, and is the registered land owner of RA315. Despite this, State Development has continued to shore up Glencore's position by working through the Aurukun Shire Council instead of via the NAK Board.

5th January 2015 - On the eve of announcing the State election, a Development Agreement was executed between Glencore International AG and the State Government for the development of RA315. Such an Agreement would normally be the subject of much media exposure and fanfare. There were no notifications to the Native Title Holders and the Indigenous land holders, and there were no claims of benefits to the State and the community; there was total silence of their rushed actions in the last day of Government.

14th January 2015 - A Mineral Development Licence application from Glencore Bauxite Resources Pty Ltd was accepted during the caretaker period. This was a blatant break with convention. It would have required persons in the Mines Department to provide the necessary paper work and signatures during the caretaker period. No notice was given to the Native Title Holders.

April 2015 - The Queensland Minister for Natural Resources and Mines gave notice in accordance with Section 29 of the *Native Title Act 1993* (Cth) (NTA) of its intention to grant Glencore a Mineral Development Licence in an attempt to circumvent the registered ILUA over RA315. The notification included a statement that the State of Queensland considered the granting of the mineral development licence as an act attracting the Expedited Procedure. Use of the Expedited Procedure avoids the need to engage in negotiations with the Native Title Holders over the grant of the mineral development licence. To our knowledge, a Section 29 notice has never been used to circumvent a registered ILUA. Once again an effort by the State Government to thwart the NAK/ABD joint-venture's proposal to develop the Aurukun Bauxite Deposit.

22nd June 2015 - Cape York Land Council notified both Minister Lynham and Minister Trad of a High Court appeal by NAK that questioned the validity of the Aurukun Provisions of the Mineral Resources Act that governed the tender process.

July 2015 - Director General of State Development, Mr. David Edwards, engaged a Wik Traditional Owner and a consultant to deliver the Government's message that they supported the selection process and the award to Glencore. The Wik man, who was at the time also retained by Glencore, convened an invalid NAK Directors' meeting on the pretense that he had a proxy from a Wik Elder and NAK Director. This Wik man attempted to have a resolution passed that would sever the ties between NAK and CYLC. Importantly, CYLC were facilitating NAK in their High Court action. This demonstrates that State Development was prepared to do anything to support Glencore's position. A subsequent complaint by NAK to State

Development has resulted in Crown Law confirming that the Wik man is now no longer on the payroll.

Another reoccurring theme has been through the Ministers' and bureaucrats' insistence that everybody in Aurukun has to agree to any proposal (*see video recording: vimeo.com/nakpbc/seeneymeeting*). Where in Australia does any development have to be agreed by everyone in the district? So why is it any different in an Indigenous community that has a range of Indigenous citizens including Native Title Holders? It is important that any development leads to improvements in the whole community, and in the ABD/NAK proposal, funds were allocated for NAK to receive independent legal, financial and economic advice to assist in setting up the necessary framework for the distribution of funds within the community. Separately ABD/AIR has proposed generous funding for the Aurukun Shire Council (ASC).

Implications

The Bligh Labor Government, the previous LNP State Government and subsequently the current State Labor Government have committed extreme and unprecedented actions to attempt to bypass the ABD/NAK joint-venture (previously known as the AIR bid) and support Glencore. This points to no checks and balances on the arguably leftover bureaucrats in Queensland's Department of State Development. The abuse of process started with the removal of NAK from any decisions in the bidding process. The LNP Government's reversal by not allowing NAK to come forward with a joint proposal, the institution of probity restrictions on NAK and ABD, the subsequent award to Glencore in a controversial Bidding Process and followed by the pantomime to support Glencore are all within the time span of key appointments with the Development of State Development.

- Once again successive Governments will do almost anything to prevent the Native Title Holders from having their own mine on their land.
- State Development, in directing negotiations through the ASC, can be held accountable for the divisions in Aurukun by bypassing NAK who act as agent for the Native Title Holders and the Wik Elders.
- The current Labor Government has steadfastly refused to meet the NAK Board to discuss these issues.

Conclusion

- This "head in the sand" approach by the current Government is evidence that Glencore holds sway over the Queensland Government at the expense of the interests of the Native Title Holders.
- The principles of Native Title enshrined in Commonwealth Law provide for there being two keys in gaining mining approvals. The first key is held by the Government who is responsible for issuing the Mining Licences under the Mineral Resources Act. The second key, granting native title consents under the Native Title Act, is held by the Native Title Holders represented by NAK. At every stage of the process, successive State Governments have contrived to deny the Wik and Wik Waya Native Title Holders of their valuable rights under the *Native Title Act 1993* (Cth) and *Mineral Resources Act 1989* (Qld). Rights that are available to them as Native Title Holders, Aboriginal Freeholders **and** as Queenslanders.

ABD proposal versus Glencore

- After 50 years of bauxite mining in Cape York, the local indigenous communities are still severely disadvantaged. This is despite all major resource areas having been granted to large international companies over the last 40 years. This alone justifies Governments looking to Australian owned independents, such as ABD/NAK to develop the deposit.
- RTA (Comalco), in joint-venture with other companies successfully created major alumina refineries in Gladstone and Sardinia (Italy), specifically for Weipa bauxite.
- Ownership within the industry has changed; Glencore purchased the Sardinian refinery, and later on-sold it to Rusal. Rusal owns 20% of Gladstone QAL refinery.
- Glencore and Rusal have cross shareholdings and can be considered affiliates. Refer to Bloomberg article from 2012 titled '*Rusal's \$43 Billion Seven-Year Glencore Deal Feeds Fued*'⁴.
- Glencore, as the world's largest trading company, is in a position to toll bauxite through Rusal's refineries and smelters. Tolling means supplying the bauxite, and either paying a conversion fee to aluminium metal, or supplying additional bauxite for a cashless transaction. This complicates transfer-pricing determinations including the implication that State Government royalties could be comprised.
- Alternatively, after the award of an MDL, Glencore can negotiate a bauxite price from RTA that is favourable, by holding the threat of development of RA315 as a negotiation tool. Pechiney used this tactic for 28 years, resulting in almost no development of RA315 (*See Appendix A on page 19*).
- In 2010 Rusal was not successful in negotiating with the Bligh State Government for access to RA315, even though it seems it used quite alarming threats to the Premier. Refer to MetalNews article '*Details Emerge About An Australian Russian Bauxite Cartel*', from initial scope in *The Business Insider: The Money Game*⁵.
- It would appear that, as an alternative, it introduced its affiliate Glencore to tender for the deposit. Glencore, by taking over Xstrata, is a major employer in Queensland and would hold sway with the Government.
- Glencore was awarded Preferred Proponent in August 2014 in dubious circumstances. It was a non-conforming tender, with no minimum benefits package for the Native Title Holders and the community. Such a benefits package was the number one criteria of the bid process. The exclusion of ABD's rival indigenous enterprise bid at the last moment points to procedural unfairness.
- Following a Lateline interview on ABC TV with Noel Pearson on 20th August 2015, Glencore responded and, amongst other criticisms, it claimed that ABD/NAK had a conflict of interest. (*See Appendix C, items 6 and 7, on pages 47 and 50 to review Glencore's statement and ABD's rebuttal*).

⁴ Fedorinova, Y., & Khrennikov, I. (2012). Rusal's \$43 Billion Seven-Year Glencore Deal Feeds Fued. *Bloomberg*. Retrieved from <http://www.bloomberg.com/news/articles/2012-04-22/rusal-s-43-billion-seven-year-glencore-deal-feeds-investor-feud>

⁵ Metalsnews.com., (2010). *Metals News - Details Emerge About An Australian-Russian Bauxite Cartel*. Retrieved from <http://bit.ly/20Kyc4x>

- Glencore CEO Ivan Glasenberg has repeatedly declared that the company is not going to support the development of greenfield projects⁶ ⁷. This reinforces the view that he is supporting the Aurukun Project on behalf of Rusal.

Implications

Successive Governments could not see the clear advantage of having ABD as developer as follows:

- Multinationals can take advantage of low tax havens and transfer pricing to minimise corporate tax and royalties in Australia. ABD has no transfer pricing issues.
- ABD has secured funding for development and has an aggressive and achievable development schedule, compared to Glencore.
- The ABD joint-venture offers a massive lift in community involvement, leading to real jobs and home ownership, with the opportunity for improved community infrastructure.
- RA315 is the only economic resource for the transformation of the local community.
- Notification of Glencore's mineral development licence pursuing the expedited procedure, is an attempt to secure an MDL now. This action could be used to a negotiating advantage with RTA, and hence delaying the development of RA315 for another 30 years.

⁶ Daley, G. (2013). Glencore unlikely to invest in greenfield. *Financial Review*. Retrieved from <http://www.afr.com/business/glencore-unlikely-to-invest-in-greenfield-sites-20130911-jh4sq>

⁷ Tapp, V. (2014). Glencore's survival strategy for mining downturn. *ABC Rural*. Retrieved from <http://www.abc.net.au/news/2014-06-26/copper-glencore-cloncurry/5551544>

Concluding comments

- The ABD/NAK proposal originated from the determination of the Native Title Holders to be active participants in wealth creation for their community on their lands, rather than being recipients of royalties which they describe as 'Sit Down Money'.
- Rather than embrace this concept, successive State Governments have done everything in their power to discourage this new dimension in resource development.
- The legislative changes to the *Mineral Resources Act 1989* (Qld) in 2006 removed important rights available to the Wik and Wik Way People, and every subsequent act of Government followed this pattern of denial.
- NAK has challenged these amendments in the High Court of Australia, and if successful will show the *Mineral Resources Act 1989* (Qld) to be flawed and that all decisions under the Act are therefore also flawed. This will require the Queensland State Government to introduce legislative amendments to reinstate these rights. At the same time, the Queensland Government will be confronted with a decision to remove Glencore's status as Preferred Proponent.
- ABD is making the case in this submission that the whole Bid Process was seriously flawed and the Evaluation Committee was in error on almost every criteria and was not equipped to assess such an innovative concept. The re-activated 24-hour Bid Process was also flawed in that due process was not followed.
- The assertions by ex-Deputy Premier Seeney that ABD lacked the financial and technical ability was a smoke screen, which has been 'blown away' by subsequent events. For these reasons, we believe the removal of Glencore as Preferred Proponent is justified.
- Prime Minister Malcolm Turnbull has stressed that as a nation we must use innovation to drive development, and also supports a focus on *Northern Development*. In his Close the Gap report on 10th February 2016, Prime Minister Turnbull urged that Indigenous Australians be granted equal opportunity in growing our economy. We, ABD and NAK, believe our proposal fits these objectives and could transform the lives of the Aurukun Community and become an example for future resource development.

With respect, we are asking the Senate Committee to endorse this concept and to press for a review of the way State Governments can better manage Native Title Rights in the future.

Section 3: Appendices

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Appendix A

Historical Background & Introduction to bauxite mining on Cape York

1. Historical Background

Matthew Flinders, in his circumnavigation of Australia in 1802, noted the red earth cliffs on the Western shore of Cape York. The cliffs were framed above a white layer of earth and sand, and were so distinctive, he noted the extent of this occurrence in his log. It was not until 1955 that exploration by CRA Ltd (now RioTinto) determined the red layer was the source of high-grade bauxite, the raw material for aluminium. The areas of potential bauxite reserves were vast, and CRA, through its subsidiary Comalco Ltd, came to an agreement with the Queensland State Government, which resulted in an Act of Parliament, (Comalco Act 1975) and entailed relinquishment of a percentage of the area back to the State Government over the next 20 years. This allowed Comalco to select the most economic reserves in term of quality, ease of processing and transport and shipping economics. The Act went further in allocating Comalco the major portion of water resources in the area in-perpetuity. Comalco's subsequent extensive drilling and sampling programme established that the quality of bauxite was higher in the northern area around Weipa and also continued south along the coast with declining grades. Quality also improved in areas where the bauxite layers were thickest, which also contributed to the coastal areas being retained.

It was not surprising that other aluminium companies have, at times, been attracted to areas outside the Comalco leases, and have taken up areas relinquished by Comalco.

The Comalco Act contained further processing obligations, which resulted in the development of Queensland Alumina Ltd (QAL) in Gladstone in 1964. The processing of bauxite to pure aluminium oxide (alumina) is an important intermediate step in aluminium production, and it was essential for Comalco to find partners for QAL to guarantee off take from the largest alumina refinery in the world. An unique joint-venture ownership structure was formed between Comalco, Kaiser Aluminum and Chemical Corporation, Pechiney and Alcan to build the refinery. The agreements necessitated to initially grant Comalco the right to supply all bauxite to QAL, but left open the rights of each participant to supply their own bauxite in the future. This led to Alcan taking up an exploration tenement to the north of the Comalco leases. Pechiney, in conjunction with others, received a controversial allocation of the land-locked Restricted Area 315 (RA315) tenements to the south. In making these allocations, the Queensland Government sowed the seeds of much inactivity and heartbreak for the local inhabitants. Both Alcan and Pechiney never developed their leases, but used their *possible* development as a lever on Comalco to agree to a competitive

bauxite price. Thus RA315 was held to no development until the Government was justifiably persuaded to resume the leases in 2004.

RA315 contains a number of bauxite resources, all widely separated and land-locked. They are relatively shallower and of poorer grade, hence have a lower economic potential than the Comalco leases. This is not unexpected, as they are the product of earlier relinquishments. **However, they do represent the only prospect of sustained economic activity and employment for the Aurukun people.** They can be made a success in today's and future economic circumstances, if development is undertaken in a lower cost and flexible manner.

2. Bauxite Mining

Bauxite is weathered clay that has been enriched with insoluble aluminium oxide by eons of rainfall, as the more soluble iron and other minerals have been washed away. Bauxite is only found in high rainfall areas and hence mainly in the tropics. The weathering process in Cape York is largely within the first eight metres from the surface topsoil, so mining involves clearing the vegetation and removing the topsoil that is later returned during re-vegetation. Mobile equipment such as scrapers, bulldozers, front-end loaders, and trucks remove the bauxite to a washing and screening facility. After mining, the soil is returned and seeded for regeneration. In mining terms, this is regarded as an extremely simple and safe operation, well-suited to the skill base of the local indigenous people. However, by necessity, the area mined and re-vegetated required each year is large, and so the distances needed to transport the ore are ever increasing. Comalco (now RioTinto Alcan) has traditionally overcome this by spending heavily on rail and conveyor systems, together with dredging, to create significant port infrastructure. The continuity of bauxite within their leases and the scale of the operations support this form of investment.

Given the isolated nature of the resources within RA315, ABD/AIR came up with a proposal, which is significantly different by looking to other similar bauxite operations around the world. It is not understood by State Development that it is inappropriate to replicate the high capital and infrastructure spending inherent in the size and scope of the adjacent RioTinto Alcan operations. Looking offshore, similar deposits to RA315 are successfully mined using fit-for-purpose mobile equipment, rather than conveyors, railways, central processing and dredged shipping facilities. Further, as already demonstrated in the Gulf of Carpentaria, there has been success in barging product to waiting ships offshore, rather than building port facilities. Examples of this are: McArthur River mine in the Northern Territory with Bing Bong Port; and the export of Century Zinc concentrates through Karumba in Queensland. Furthermore, a more flexible and sustainable model also fits with ABD's commitment to provide 70% of all jobs to the local indigenous people (within 7 years of operation). These targets are contained within our registered landmark Indigenous Land Use Agreement (ILUA), signed in September 2014.

3. The Tragic History of RA315 and the Appalling Record of the Department of State Development, Queensland Government

During the 1970's, following Comalco's relinquishments, the consortia comprised of Pechiney, Shell and Tipperary Land Corporation was formed under the banner of 'Aurukun Associates Ltd'. They applied and were granted by the State Government the rights to further explore and mine an area inland and south of Comalco's finally determined lease boundaries. This area was designated 'RA315' by the State Government. The award of this area, which had been continuously occupied by the Wik and Wik Waya indigenous families for centuries, required the signature of the State Protector of Aborigines, Mr. Patrick Killoran, who signed away their rights without prior consultation. This led to a Supreme Court challenge on behalf of the Traditional Owners (*Peinkinna Case*, 1978), which was successful. Premier Bjelke-Petersen then appealed the case to the Privy Council in London (the High Court of Australia was not yet established). This required the community leaders to travel to London to plead their case before this most wretched and archaic Colonial force. Bjelke-Petersen won the appeal. It is indeed sad and ironic that in the last few years, we have witnessed the death of these brave men and women, who boldly took the journey, only to see again the denial of rights now enshrined in Commonwealth Law once again jettisoned by the LNP Government and the current Queensland State Labor Government. Over time, the other parties under the "Associates" withdrew from the consortia, leaving Pechiney the holder of the RA315 lease.

As described earlier, they used the potential to develop the deposit as a bargaining chip in negotiations with Comalco, and spent a minimal amount on their exploration activities. Not a tonne was mined for the 28 years it was held and no benefits or permanent jobs flowed on to the community. In 2003, after extensive lobbying by the Native Title Holders, the Beattie Government made a justifiable move in resuming the lease from Pechiney. However, with the resources boom emerging, they were poorly advised that the leases could be sold at a substantial profit to assist the Government's budgetary woes. To this end, they called for an international tender process through the Department of State Development, rather than allow the leases to be handled in the normal way through the Mines Department. The tender documents specified the construction of an alumina refinery as a pre-condition for development. In 2004, having retired from full time work and knowing the background of these leases, Nick Stump (a former CEO of Comalco) took it upon himself to make an appointment with the Minister for State Development, the Hon. Tony McGrady, and suggested to him that such a demand for an alumina refinery plant was totally unjustified, and given the difficulty inherent in the deposits, would impede development. The tender resulted in the appointment of Chalco (Aluminium Corporation of China Limited), a well-resourced and respected Chinese company. Chalco diligently assessed the deposit over two years and finally concluded they could not proceed with the requirement of an alumina refinery, but were still keen to proceed with a bauxite mine. The Department of State Development's handling of this matter is really under question, as they do not have the background to understand a resource project of this type, and

ended in a very acrimonious outcome with Chalco walking away in 2010 after spending over \$100million on their feasibility study⁸.

In the second half of 2010, Premier Anna Bligh went to Russia to meet with executives of Rusal, who by then had a 20% shareholding in the QAL alumina plant in Gladstone. They expressed a very strong interest in gaining access to the Aurukun bauxite reserves and made some quite aggressive threats to the Premier if this was not agreed to. Refer to MetalNews article '*Details Emerge About An Australian Russian Bauxite Cartel*', from initial scope in *The Business Insider: The Money Game*⁹.

This led to a period where Native Title Holders and the Aurukun Shire Council initiated their own discussions to ensure that history was not repeated.

The mayor of Aurukun Shire Council, Mr. Pootchemunka called upon Cape York Land Council and Balkanu Corporation to explore opportunities based on Native Title Holders having part ownership of any new mining on their land. Mr. John Benson, a retired Australian businessman who had been providing philanthropic assistance to education and housing programs for Indigenous communities in the Cape, was invited to present options based on the concept of a joint-venture.

During 2011 many discussions took place between Mr. Benson and the Aurukun community.

Progress reports were enthusiastically received by Premier Bligh and Deputy Premier Andrew Fraser. However, in December 2011, the Co-coordinator General advised NAK that any ownership in a bid vehicle would be a conflict of interest if they wanted a voice in the Government's decision-making panel. NAK therefore was required to surrender their Native Title Rights (their 'key') if they wished to actively participate in a bid vehicle.

Despite this advice, the then Mayor of Aurukun Shire Council, encouraged Mr. John Benson to continue with his submission of the concept proposal. However, it was returned unopened by the Co-ordinator on the grounds that it was an unsolicited bid and a potential conflict of interest if a tender process was to be adopted.

The sudden and sad loss of the Mayor Pootchemunka over Christmas 2011 led to an extended Sorry Time in Aurukun. A new Mayor, Derek Walpo, was elected in Aurukun, and the Newman LNP Government won the Queensland State election a few months later.

⁸ Fraser, A. (2011). Chalco loses Aurukun leases. *The Australian*. Retrieved from <http://www.theaustralian.com.au/business/chalco-loses-aurukun-leases/story-e6frg8zx-1226085911157>

⁹ Metalsnews.com., (2010). *Metals News - Details Emerge About An Australian-Russian Bauxite Cartel*. Retrieved from <http://bit.ly/20Kyc4x>

Following the election of the LNP Newman Government, the new Coordinator General's office invited Mr. Benson in to discuss ways forward for the RA315 deposit (July 2012). In August, a presentation was provided to the Government (attended by: New Deputy Premier and State Development Minister Mr Jeff Seeney; five senior Government officials; Balkanu Chair; Cape York Land Council Chair; APAC Hong Kong CEO; MacMahons COO; AIR Director and Wik Way Traditional Owner and Managing Director of Wik Timber Ms. Castelain). During this presentation the team was encouraged to re-submit a full proposal with formal evidence of support from Traditional Owners and NAK.

The Committee will be well versed on the timeline of events from this point on that resulted in the State Development Department announcing a new International Bid (November 2012). See Section 1, *A Case for ABD*, on page 3.

Appendix B

Evaluation Committee Response

*The following document was delivered verbally to AIR/ABD on 9th April 2014.
The document was later provided in hardcopy to ABD on the 6th August 2014.*

*The following document includes the Evaluation Committees AIR debrief report
comments (in grey and boxed) and responses completed by the ABD
team to each item.*

*The Evaluation Committee's report was completed in December 2013 as
part of the Bid Process for Aurukun Bauxite Project.*

Executive Comment on the Evaluation Committee's assessment

The original AIR response to the State Government's Request for Detailed Proposal (Sept 2013), and the progression to the ABD/NAK joint-venture is an innovative but economically viable and desirable model for resource development on Indigenous Native Title lands.

In terms of benefits flowing to the community, it sets a new benchmark capable of having a real and positive impact in 'Closing the Gap'.

Despite the invitation by Queensland State Government for AIR to address perceived shortcomings in their bid document, the resulting ABD/NAK proposal was not afforded the opportunity to be assessed by the Evaluation Committee. The enclosed de-briefing document on AIR demonstrates the failure of the Committee to follow professional due-diligence and consult with both AIR and particularly the Native Title Holders, represented by NAK, in an effort to fully understand the proposal. Fundamental errors and misunderstanding of both the benefits package and the Mining Plan of AIR led to invalid and biased conclusions. The errors in analysing AIR's audited financial model were compounded throughout their assessment.

AIR Debrief

Background

Purpose — debrief AIR on outcome of competitive bid process

Verbal briefing only

Will not discuss other bids

Evaluation Committee composition

Probity Controls

Specialist Advice — mining, legal, native title, financial/commercial

Ratings

- **High Very strong achievement of the criteria**
- **Medium/High Strong achievement of the criteria**
- **Medium Sound achievement of the criteria**
- **Medium/Low Limited achievement of the criteria**
- **Low Very limited achievement of the criteria**

Report and Recommendations prepared for Government

December 2013

Evaluation Criteria 1 — Maximise the benefits and returns from the Project to the Native Title Holders and the Aurukun community.

- **Nature and quality of offer to the Native Title Holders**
- **Nature and quality of offer to the Aurukun community**
- **Nature and value of economic benefits to the Native Title Holders**
- **Nature and value of economic benefits to the Aurukun community**
- **Extent of proposed changes to the Aurukun Agreement**

Rating — Medium/Low (Limited achievement of the criteria)

Evaluation Committee Comment under Criteria 1:

- **On face value, the AIR proposal had the potential to provide very significant benefits both in terms of the nature and timing of the stated benefits to the Native Title Holders and the Aurukun community. However, closer assessment identified a number of potential issues with the quality, achievability and subsequent likelihood of these stated benefits being fully realised including namely:**

- **the sensitivity of the benefits to changes in real prices for bauxite**

ABD's response: The impact of price movement will affect the economic fundamentals of any proponent. AIR subscribed to the commodity-forecasting experts CRU International Group who are recognised as a world leading provider of price forecasts for the resources sector. The forecasts used were conservative. AIR adopted conservative assumptions in financial modelling for inflation, exchange and the like. AIR also introduced a minimum floor benefit to both Aurukun Shire Council and NAK through a \$0.20/tonne royalty on export. The royalty payment to NAK is best defined as 'an advance against future dividend'. There is no liability exposure to either NAK or ASC.

- **the potential overestimation of local workforce benefits (given the regional workforce profile; and**

- **the competing demand for local labour from similar resource developments) and business spending.**

ABD's response: It was stated that a spend of AU\$8million with local community projects would not be achievable. However, this was based on the present community infrastructure and businesses. AIR's development will create significant demand for local produce and small business to supply the project and the workers with a range of products and services.

- **The offer was complex in terms of its overall structure, intended beneficiaries, legal and commercial implications and the way in which benefits would be delivered.**

ABD's response: The offer and structure were not complex. The concept was innovative but responded to the express desires of Aurukun elders and NAK. The provision of a royalty stream for stakeholders in resources projects is accepted practice and widely used throughout the industry. However, the main revenue flow to NAK is through dividends.

- **Given the level of complexity, the Evaluation Committee considered that it highly unlikely that an ILUA can be successfully negotiated and finalised by July 2014 as proposed.**

ABD's response: This has already been proven wrong. An ILUA and CHEMP together with legally binding joint-venture agreement was successfully negotiated. The conclusion of the Evaluation Committee was proven invalid by the fact that a full ILUA (included a Cultural Heritage and Environmental Management Plan) and a supporting Joint-Venture Agreement were all successfully concluded within six months after probity restrictions were lifted in March 2014 at the close of the formal bid process.

This begs the question:

1. Did the Evaluation Committee elect to ignore the historical background of AIR's relationship with NAK? I.e. Before the start of the bid process and probity restrictions were introduced Mr Benson, at the invitation of Wik Elders, the past Mayor of Aurukun Shire Council, and the Board of NAK, had concluded 12 months of meetings resulting in an Heads of Agreement and a Memorandum of Understanding being signed.
2. Did the Evaluation Committee's due diligence not include checking the experience of Mr Benson in negotiating such ILUAs in Cape York? In fact, just in 2012 Mr Benson had successfully negotiated a full ILUA with the Kalpowar Trust within 12 months.

- **If the offer was made to the Native Title Holders in its proposed form, it is unlikely to be acceptable, based on factors including:**

- **That the ILUA is proposed to cover both the MDL and ML;**

ABD's response: Wrong. This was achieved.

- **the need for the Native Title Holders to purchase 15% equity in AIR which will place the representative body in the position of burdening itself with substantial debt immediately;**

ABD's response: This statement demonstrates clearly that the evaluation committee had not reviewed the financial model. There is absolutely no liability to the loan account of the joint-venture attached to the 15% ownership.

The conclusion of the Evaluation Committee that the Native Title Holders would be exposed to debt from our structure is invalid. In July 2013, Mr Graham Albion

organised a commercial and technical workshop attended by the State and assisted by consultant AMC (AMC Consultants¹⁰) and Treasury Corporation. During discussions, the financial adviser for AIR, Mr Andrew Tod, emphasised that NAK would receive benefits free from capital contribution and free of any liability. He reinforced this statement by referring the workshop to the detailed and audited financial model provided by AIR showing clearly that the 15% holding and dividend stream to NAK was free of liability. Mr Tod's repeated suggestion and request for additional workshop was not adopted. The question needs to be asked why did the Evaluation Committee not communicate with NAK on the issue of whether or not the AIR offer was likely to be acceptable.

- **the fact that the proposed not for profit organisation is gifted 10% (and the perceived inequity that this creates); and**

ABD's response: As the year (2013) progressed, this provision was removed.

- **that the Native Title Holders receive an advance of 20 cents per tonne of bauxite until the loan is repaid, whereas the Aurukun Shire Council is paid 20 cents per tonne for the life of the mine.**

ABD's response: Once again, the evaluation committee has misinterpreted the offer. The 20c/tonne is a liability free advance against future dividends the Native Title Holders are entitled to. This payment occurs from the First Shipment to provide the Native Title Holders with a cashflow with an advance of dividend. The concept of a loan was a complete fabrication by the evaluation committee. ASC does not have any equity in AIR and is therefore not entitled to dividends. However, the ASC is a significant community stakeholder associated with the project and AIR management decided to gift a royalty stream to the ASC for the life of the project.

- **If the ILUA cannot be negotiated, AIR would need to resolve native title through a right to negotiate process, which would add at least 12 months to its timeframes.**

ABD's response: This is an absurd statement. The Native Title Holders (NAK) were at all times to be joint-venture partners with AIR.

- **The way in which benefits will be distributed was unclear and seemed to tack equity as between the parties. For example, the Evaluation Committee noted that it was unusual to involve traditional owners directly in negotiations and payment of benefits in circumstances where native title has been determined and the Native Title Holders are represented by a registered native title body corporate (in this case the Ngan Aak-Kunch Aboriginal Corporation RNTBC). This approach has potential for dividing the community. Though AIR stated its commitment to working with the community, the offer has real potential to create division within the community.**

ABD's response: This statement reflects poorly on the evaluation committee's understanding of Aurukun native title dynamics, and their inability to acknowledge that the direct involvement of traditional owners in negotiations and payments of

¹⁰ AMC Consultants. (2015). *AMC Consultants*. Retrieved <http://www.amcconsultants.com/>

benefits was a high priority for the Native Title Holders and NAK. AIR accepts that this is a break with tradition but this approach in the mind of the elders had the potential to unite rather than divide the community. AIR's approach was ground breaking and was set to establish a new benchmark in native title negotiations.

- **Given the current state of education and available skills within the Aurukun community, the employment targets stated in the offer are unrealistic and without a significant lead time and injection of considerable funds on education and vocational training are unlikely to be achieved within the proposed timeframes.**

ABD's response: Once again, the evaluation committee demonstrates a defeatist attitude and a lack of understanding. Both Dan Tenardi (CEO of Ngarda) and Jim Lewis (CEO of Dadaru) have a proven record of achieving the forecasted employment targets, and AIR had set aside considerable funds for education and training. Key components of AIR's strategy were to establish training opportunities for local people with Ngarda and Dadaru immediately so they would be job ready around the time of project commencement and to attract qualified local people who were working elsewhere back to Aurukun.

- **The economic impacts are highly sensitive to a number of stringent assumptions, discussed as follows:**

- **Sensitivity analysis on price suggests that a 5-10% reduction in real price leads to a net loss in that year;**

ABD's response: This change could not be replicated in the model. In the very early stage of the project's development one month had negative cash flow when the price was reduced by 10% this has minimal impact on the project economics. This assertion by the Evaluation Committee was never demonstrated.

This suggestion that "a 5-10% reduction in real price leads to a net loss in that year" is simply incorrect. The most basic analysis of the financial model provided by AIR demonstrates that the comment and conclusion of the Evaluation Committee is blatantly invalid.

- **If this holds, this will have an adverse impact on dividends and other proposed profits;**

ABD's response: Applicable to all proponents

- **Based on the labour force profile, it appears too optimistic to assume that 70% of workers can be sourced from Aurukun, similar and well established projects in the broader Cape York have sourced significantly lower proportion of workers.**

ABD's response: Dealt with above, and demonstrates that the evaluation committee lacked any ambition to improve on what has been an unacceptable performance of other projects in the past.

- **This highlights some potentially significant risks and sensitivities that could prevent benefits from being fully realised.**

ABD's response: N/A

- **There are no difficulties with implementation of the offer to the Aurukun Shire Council as it presently stands or with any relevant timeframes.**

ABD's response: N/A

- **The offer to the Aurukun Shire Council of 20 cents per tonne royalty (amounting to \$41 million in real terms) over the 35 years of Stage 1 is very generous. This benefit has the potential to divide the Native Title Holders and the Aurukun Shire Council as the similar benefit being offered to the Native Title Holders is only available until they receive dividends after repayment of their loan.**

ABD's response: A repetition of the misunderstanding of the offer. If the evaluation committee had accepted AIR's offer of workshops to avoid misunderstanding, then they would have realised that the offer to ASC is 'very generous' and that the offer to NAK acting as agent for the Native Title Holders and wider Wik community was even more generous.

- **Business spending of \$8 million per annum appeared to be too optimistic. At present, Aurukun region does not have an established business network. The region's employment is mainly in non-market sectors such as public administration, arts and recreation services. In 2011—12, only three businesses were counted in the shire, each employing between five and 19 people. These businesses were in the agriculture, forestry and fishing sector.**

ABD's response: AIR's ambition was to simultaneously support and build service enterprises and expand the economic activity in Aurukun. AIR's development will create significant demand for local produce and small business to supply the project and the workers with a range of products and services. It is totally unreasonable to evaluate AIR's proposal on historical statistics.

- **Notwithstanding the issues outlined above, the proposal did indicate a strong commitment to working with the ASC and the Aurukun community in development of the mine.**

ABD's response: A welcomed acknowledgement by the Evaluation Committee in light of its complete distortion of the financial model and AIR's proposal.

Evaluation Criteria 2 — Maximise the financial returns to the State.

- **Extent of proposed changes to the Aurukun Agreement**
- **Value of financial return to the State**

Rating — Medium/Low (Limited achievement of the criteria)

Evaluation Committee Comment under Criteria 2:

- **AIR proposed to pay the Development Premium of \$5 million, however, based on the financial viability of the AIR proposal; it was questionable that AIR had the ability to pay the development premium when it falls due.**

ABD's response: The economic fundamentals of the AIR proposal were sound and included not only the payment of the Development Premium but also the provision of a \$10million Performance Guarantee.

- **The technical and financial viability of the AIR proposal was doubtful and as such it is questionable whether the project would be delivered and the financial returns realised.**

ABD's response: The speculating and biased expressions of doubt on AIR's capacity to raise finances, as required, was proven with the advancement to ABD and the introduction of AU\$80 million equity funding. Financial viability exposes the lack of understanding of the Evaluation Committee into the normal sequencing of funding for a new specific purpose company.

It seems extraordinary that the Evaluation Committee, when considering the financial returns to the State, would focus on the payment of a AU\$5million Development Premiums. By far the greatest financial return to the State is to be generated by royalty payments. Every year that the project is delayed, denies the Queensland Government of millions of dollars of royalty per year.

Evaluation Criteria 3 — Timeliness of development and commitment to protect

• **Level of commitment and deliverability based on:**

- **Strategic need**
- **Technical viability**
- **Financial viability**
- **Overall viability of the proposal**

Rating — Low (Very limited achievement of the criteria)

Evaluation Committee Comment under Criteria 3:

- **AIR has no bauxite, alumina or aluminium interests. AIR's strategy was based on providing benefits to the Aurukun community and its RFDP Response showed an intention for a high level of engagement with the local communities, but from a business perspective did not demonstrate a strategic need.**

ABD's response: AIR is a fit for purpose new company entity committed to a partnership with the Native Title Holders. The strategic need continues to this day and is the economic need for empowerment of the Wik People. AIR demonstrated that APAC-Hong Kong was willing and able to provide a bankable offtake for product.

A peculiar response from the Evaluation Committee as its view is that only people with bauxite related experience would be capable of developing the Aurukun deposit. As such there was an inherent bias in its judgment. There are numerous examples of new players entering the resources industry in Queensland and being highly successful.

The AIR team had a demonstrable track record in business development, project development and managing projects in the resources sector.

The Evaluation Committee's comments may have had some legitimacy in the past, when the Aluminium Industry was integrated through ownership. However, with the significant growth in China of 'stand-alone' Alumina refineries, the independence of ABD should have been rated as an advantage.

The public affiliation of Glencore and Rusal introduces the risk of Glencore sitting on RA315 just like Pechiney and Alcan. I.e. Glencore enjoying a trade negotiating advantage over neighbouring mine RioTinto Alcan for their bauxite requirements without the need to develop the RA315 mine.

Alternatively, if Glencore's strategic need led them to develop mining in order to service contractual obligations to Rusal then both the Native Title Holders and Government are exposed to the risk of transfer pricing, tolling and the lack of transparency, which is created by trading with affiliated parties.

- **AIR has no experience in development or operation of mines in Queensland or elsewhere. The ability of AIR to successfully develop and operate a mine to exploit the Aurukun bauxite resource was not disclosed by the RFDP Response.**

ABD's response: Once again, the comment demonstrates the difficulty of the evaluation committee in understanding what a new specific purpose vehicle is. At the stage of the evaluation, Dan Tenardi (CEO of Ngarda) and Brett Smith (COO of Forge Ltd) had both agreed to join the operating Board. Andrew Tod has proven experience in minerals exploration, the development of greenfield resources projects, the operation of coal mines and the international marketing of commodities.

With the passage of time, and the maturing of the AIR structure to ABD, Nick Stump (retired CEO of MIM and Comalco) has now also joined the Chairman. Given the extended time required for deliberation by Government, Brett Smith is the CEO of Dragon Mining Ltd but continues to be available in a consulting role.

AIR had no experience as an entity, however the Directors and Senior Executives have over 100 years of bauxite development experience in Australia, between them. Moreover, the offers of technical support (provided by Thiess Pty and Ngarda Civil and Mining) combined with the management mentioned above was sufficient to allow Mr Benson to raise AU\$80 million of private equity funding for Stage One of this project.

- **AIR's Submission demonstrated limited to very limited achievement of the criteria for technical viability as prescribed in the RFDP. Most technical aspects in AIR's Submission were addressed to a level commensurate with a scoping study rather than the prefeasibility study standard required under the RFDP.**

ABD's response: AIR disagrees with this comment. Technical input into the feasibility study was audited Ngarda Civil and Mining, Thiess, and Forge. The financial accuracy was audited by Corality.

- **AIR proposed a contractor operation, with separate contractors for mining, processing, transshipment, and accommodation facilities. Benefits of this approach are that the technical risk is moved to the contractors and the capital requirements borne by AIR are reduced. However, the proposed arrangement also introduces dilution of control and consequently it poses a managerial and operating cost and product quality risk.**

ABD's response: An extraordinary statement and shows the Evaluation Committee's lack of understanding of the resources industry. Almost 35% of operations Australia-wide are carried out by contractors. The contracting model enabled AIR to take advantage of the contractor's experience whilst maintaining full control. It is absurd to suggest that using a contractor poses managerial, operating cost and product quality risk. These issues are dealt with via KPI's and strict terms and conditions in the mining services agreement. The contracting model was based on local indigenous to be the operators and maintenance personnel.

- **AIR focused the development of a proposed mine around the Watson River. The mineral resources in this area are not defined to a high level of confidence. Based on the information available, there are insufficient resources in this area to support a 35 year life of mine. This will necessitate AIR undertaking a significant drilling program earlier than planned to prove up resources to support the planned mine life. The costs of this drilling program will be significantly greater than has been allowed by AIR.**

ABD's response: AIR was aware that deposits in Coconut (northern area of RA315) were at an advanced JORC status. The 4-month infill drilling program, itemised in our works program and budget had been tendered by an experienced group from Western Australia. AIR recognised the potential advantages of the Coconut Deposit but probity restrictions had hampered our ability to ground truth a suitable export access from this northern side. With the formation of ABD, discussions with neighbouring lease holders and surveys shifted our priority to the Coconut Deposit.

- **AIR proposed a combined wet and dry processing strategy. This strategy posed a risk to the project in that Aurukun has a wet climate and screening of relatively fine material with high clay content could be a problem.**

ABD's response: High pressure, low water volume separation has been used elsewhere for the beneficiation of bauxite. Ngarda was to bring this experience to AIR. AIR was entitled to be confident that this process would be cost effective and environmentally responsible solution.

- **AIR's tailing disposal strategy relied on co-disposal into the mined-out areas. This strategy could be problematical as a result of the high annual rainfall in the Aurukun area. Providing for a tailings disposal facility will have a significant impact on capital expenditure and this has not been costed in the RFDP Response.**

ABD's response: Naturally, such environmental challenges would be addressed during EIS. Ben Ziegelaar is recognised in the industry as an expert in these matters. Ben is part of the AIR team. CV was included in the organisation chart and RFDP appendices, as required. Co-disposal is used in mines overseas that are in tropical areas.

- **AIR did not assess the environmental issues in any detail.**

ABD's response: CQ Environmental had joined John Benson in field visits and community meetings for a period of 2 years. Historical data built up over 30 years entitled AIR to be confident in addressing environmental issues. Probity restrictions once again did not facilitate additional work on the ground.

- **The development schedule proposed by AIR was unrealistic, with construction scheduled to start in July 2015 and production to start in July 2016.**

ABD's response: AIR does not agree that this was unrealistic. Nor did Ngarda and Thiess who had joined John Benson in field trips to Aurukun. The development schedule was carefully planned by experienced project development personnel. We

plan to start with a small scale operation for training with a ramp-up to full-production on the basis of Government approvals.

- **The risk assessment provided in AIR's Submission was superficial and does not adequately identify and quantify the technical risks.**

ABD's response: AIR's submission was critically reviewed as stated above, and technical risks have been well understood after 30 years of Comalco / Rio Tinto's bauxite operation.

- **There has only been a cursory analysis of the land access issues and the proposal only provided limited detail on the transport of product from plant to barge.**

ABD's response: Not correct. In respect to Land Access, discussions had taken place with neighbouring lease holders. One of Asia's largest barging operators joined with Dadaru to do detailed desktop analysis and fly-over of waterways.

- **The proposal for a barge facility that is not subject to third party negotiations was a benefit.**

ABD's response: N/A

- **AIR has no track record of being able to raise significant funds to finance a project such as this.**

ABD's response: This is a repeat of the clear misunderstanding the evaluation committee has on a special purpose vehicle. John Benson had introduced Mark Carnegie, the CEO of M. H. Carnegie & Co to Mr. Dave Edwards to give comfort in the ability of AIR to raise funds required. Mr Benson assisted by Mr Brett Smith had previously raised US\$600million through the EXIM Bank of China for infrastructure development in Australia. AIR was a newly formed specific purpose company: it therefore had no track record. However, the Founder Mr Benson was able to raise AU\$80 million for the project within just 6 months on this statement being made by the Evaluation Committee.

- **Operating margins were fairly low and provided limited scope -for material increases in expenses or lower bauxite prices. With most of the operating costs being outsourced to contractors, there was some mitigation in operating expense volatility for a period of time. However, AIR is exposed to periodic recontracting risk and is less able to adjust operating costs for changes in production.**

ABD's response: The robust NPV of the project demonstrates that operating margins were robust. Clearly the evaluation committee did not understand the contractor mining model which is used by many of the World's largest resources companies.

- **The bankability of the proposal was also weak as there were material risks identified with the proposal. Significant risks include:**

- **The high degree of project risk including uncertainty in the commerciality of the resource;**

ABD's response: This is clearly a concern for all parties participating in the Government's process and not isolated to AIR.

- **The lack of management experience in developing and operating mines;**

ABD's response: As discussed above AIR consortium was lead by experienced mining executives.

- **The challenge in the management of multiple non-related parties; and**

ABD's response: This is not correct. The AIR operating model proposed one interface with each of mining and barging.

- **A proposed funding structure with no firm commitments from either debt or equity providers.**

ABD's response: This is proven to be wrong with AIR's subsidiary ABD executing a legally binding investment agreement for private equity funding of Stage 1 (approx. AU\$82 million)

- **These risks lead to a proposal that would not likely be considered 'bankable', or viable from a debt and/or equity perspective.**

ABD's response: Proven wrong, as above

- **It appeared that AIR's capital and operating costs were likely to be significantly higher than estimated. The Evaluation Committee noted that AMC had advised that:**

- **The Capital cost estimate provided in AIR's Submission was at least 50% underestimated;**

ABD's response: The method of operation and subsequent required for high capital infrastructure was obviously not taken into account by AMC. AMC is an industry consultant and as such typically takes a conservative approach to project operating and cash costs. AIR's capital costs were developed from first principles. The relatively shallow and widely dispersed resources within RA315 make it essential for a different approach to the RTA leases which use an higher proportion of fixed capital.

One can only conclude that AMC Consulting was utilising the RioTinto Weipa project as a benchmark. ABD recognised that the RA315 resource is quite different from its neighbouring deposits near Weipa, and is better managed with mobile equipment, and less high capital cost infrastructure.

- **No contingency was provided for by AIR in the operating cost estimate;**

ABD's response: This was not required and was evaluated via the sensitivity analysis.

- **It was not clear if contractors had provided for adequate contingencies in their estimates.**

ABD's response: It is a fundamental principle of the contracting model that contractors provide contingency in their estimates. AIR was not exposed in any way. Dadaru, the barging company, and particularly Thiess, being engaged in infrastructure and operation are both experienced and professional operators. AMC is questioning the professionalism of these entities and their ability to support 'price for specification and tonne of product'.

- **There was insufficient resource confidence to support project funding. Further drilling is required to prove up the size and quality of the resource. This will be a significant additional cost that was not adequately allowed for in the AIR proposal. This further information is vitally important as variations in the quality of the resource will have a direct impact on the price that the bauxite product can fetch in the market.**

ABD's response: This has been proven wrong with private equity funding being put in place. As mentioned above, the detailed quote for infill drilling and analysis for the first 5 year mine plan was provided by an experienced and qualified contractor from Western Australia. The evaluation committee appears to discount or ignore the fact that 30 years of investigation has led to the general acceptance that RA315 contains significant resources with the northern resource being evaluated to a JORC code compliance.

Evaluation Criteria 4 — Ensure that the Project is delivered at no cost and no risk to the State over the life of the Project.

- **Extent of proposed changes to the Aurukun Agreement**
- **Extent of requirements of the State to be met**

Rating — Medium/Low (Limited achievement of the criteria)

Evaluation Committee Comment under Criteria 4:

- **Though AIR proposed few amendments to the Aurukun Agreement, the Evaluation Committee considered that based on its RFDP Response, AIR could not deliver the project in the timeframe and for the cost set out in its bid.**

ABD's response: This is an unsubstantiated and incorrect statement that AIR was not given the opportunity to refute.

AIR proposed very few changes to the Aurukun Agreement and additionally agreed to provide an AU\$10 million Performance Guarantee to ensure that the Queensland State Government incurred no cost and no loss from the failure to pay premium deposit. In a worst case scenario, the Government could cancel the MDL to AIR in the same manner as they dealt with previous (Pechiney and Chalco) and receive the Performance Guarantee bond to cover any incurred costs.

- **In addition, based on the financial analysis, it is highly unlikely that AIR would be able to meet the payments required under the Aurukun Agreement.**

ABD's response: The private equity funding now in place for the development of bauxite mining within RA315 has been provided by investors who have many years' experience in mining, barging and transshipping. They are well informed, and their executives have visited RA315 and met with NAK Directors and Community members. They have a history of investing in infrastructure in North Australia and in fact in 2003 was awarded the Asian Business Award (of Export and Industry) by the Northern Territory.

ABD's concluding comments to the Evaluation Committee report:

During April 2014, both the Deputy Premier Jeff Seeney and Campbell Newman extended a specific invitation for AIR to present a new proposal and address the perceived shortcoming of the AIR bid. I.e., to demonstrate:

- Financial capacity to progress the project in a timely fashion;
- Mining experience at Board and Senior Management levels;
- A clear legal structure showing ownership and relationship with NAK;
- The Capacity to negotiate a detailed ILUA and CEMP with NAK; and finally
- To confirm no liability was attached to Indigenous Benefits.

This was all submitted in a legally binding format, in July 2014, at a significant cost to AIR.

This begs the question – as to why Graeme Albion described the ABD proposal as an unsolicited bid and why did the evaluation committee not review and update their evaluation?

Appendix C

Correspondence, Media Reports & other supporting material.

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1. Graeme Albion email to Phil Hunter regarding probity, 7 November 2012

From: Albion, Graeme
Sent: Wednesday, November 07, 2012 11:51 AM
To: Philip Hunter
Cc: 'Peter Bruton' ; Blackman, Darcy
Subject: Expression of Interest Invitation - Aurukun Bauxite Resource

Dear Philip

On 16 September 2012, the Premier announced that expressions of interest would be called for the development rights to the Aurukun bauxite resource with a shortlist of proponents to be selected by April 2013. The Deputy Premier, Minister for State Development, Infrastructure and Planning is leading this process for the Queensland Government and in the coming weeks the Government will release an Expression of Interest Invitation to start the competitive bid process.

In order to ensure that the competitive bid process is conducted fairly and equitably the Government is applying strict probity controls and to this end we have appointed Mr Peter Bruton of Argyle Corporate Advisers as the Probity Auditor to oversee the competitive bid process.

We understand that the Ngan Aak-Kunch directors have been approached to review a proposal put together by some traditional owners and a bidder with the intention to submit the proposal before the commencement of the competitive bid process. Please note that the Government is not and will not be considering proposals from bidders or consortia outside the announced competitive bid process.

Given the apparent interaction between the Ngan Aak-Kunch directors and a potential bidder, the probity controls that we have implemented constrain the Government from providing you and the Ngan Aak-Kunch directors with a briefing on the Expression of Interest Invitation ahead of its release. We are advised by Mr Bruton that we can only provide a briefing if the Ngan Aak-Kunch directors advise us in writing of their intention not to partner with any potential bidders ahead of or during the expression of interest phase and the directors sign probity declarations to this effect. Mr Bruton is available to discuss this matter with you. He can be contacted on mobile [redacted] and email [redacted]

Kind regards

Graeme Albion
Director, Aurukun Project
Department of State Development, Infrastructure and Planning

2. Meeting notes – 3 July - ABD meet with Deputy Premier Seeney

Diary Note - JB

Meeting Minutes

July 3, 2014

Present: John Benson (JB), Gerhart Pearson (GP), Richie ah Mat (RaM), and Nick Stump (NS)
Government: Matt Adams (MA), Jeff Seeney (JS), Jeff Popp (JP), and Dennis Bird (DB).

Meeting details: July 3, 2014, 3pm, Deputy Premier's office, Lvl 12 Executive Bldg., 100 George Street, Brisbane.

***As per protocol, GP had provided an agenda with the Deputy Premier's office for the meeting.**

This included the agenda items of:

“

- To follow up previous discussion, held in Cairns on Wednesday 14 April.
- To present a five-minute PowerPoint presentation, which summarises an updated proposal for the development for bauxite mining with RA315. For your information, I have enclosed one of the slides here which breaks down the ownership structure.
- To submit a formal application for Mineral Development Licence (MDL) on behalf of Aurukun Bauxite Development Pty Ltd (ABD) and Ngan Aak-Kunch Aboriginal Corporation (NAKAC).
- To consider the way forward.

“

Recount of conversation taken by Mr John Benson, following the events of the meeting

JS Extended a formal welcome.

JB I have extremely busy attending to the challenges you extended to us in our last meeting in Cairns and it is my pleasure to introduce you to our new Chairman, Mr Nick Stump.

JS Nick, you need no introduction.

NS Thank you Deputy Premier. I am very happy to join the Board of ABD, and I strongly endorse their mission to introduce Indigenous Ownership in the mining of bauxite on the RA315 lease. I am very familiar with the area from my years in Comalco.

JB May I quickly go through our presentation? We have succeeded in formalising an Investment Agreement with a Private Equity funder from Singapore. I am delighted that I have introduced an old business partner who shares the interest in supporting Traditional Ownership in our new structure. I understand that Gadens forwarded you a summary of the Investment Agreement yesterday, which would have included their willingness to provide the Queensland Government with a \$10million Performance Guarantee.

JS Mr Benson, that's just a drop in the ocean as far as Queensland Treasury is concerned, and that's not going to influence my decision.

JB Deputy Premier I am confident that we have addressed all concerns and the perceived shortcomings of the AIR bid as expressed by you at our meeting in Cairns.

- JS (Addressing GP and RaM) Look, I am determined to get a good deal out of bauxite mining of the Aurukun people. That is my role in Government, and I am determined to protect **your** interest. I am here to ensure that Government delivers the best possible offer from proponents like Mr Benson and Mr Stump.
- RaM Mr Deputy Premier, we thank you – but the Native Title Holders of Aurukun support the efforts of Mr Benson. They told you this in 2012 when you visited Aurukun. Their top priority is that they wanted ownership and participation at Board level. And Mr Benson stump and Mr Stump have agreed in the Proposal from ABD. We support that proposal.
- JS As Deputy Premier of the State, I will not take the risk of accepting a proposal for the mining in RA315 from a small company without any proof of delivery capacity. You would be better placed to take a smaller area within RA315.
- NS (Interjected) ABD does have the capacity to deliver. I used to be the CEO of Mount Isa Mines and Chairman of Comalco Weipa. Bauxite mining is Large Scale Landscaping. There is no significant technical challenge, and the ABD team is more than capable particularly with active support of Traditional Owners.
- JS Maybe a way forward is for you to consider an exploration permit over a section of RA315 to prove your capability. The Government may be interested in dividing the Lease up, amongst various mining companies.
- GP Deputy Premier, that concept would have the potential to divide the Traditional Owner and community, into the 'Haves' and 'Haves-not'. I cannot imagine that any other mining company would provide the ownership and benefits package that ABD has on the table. The community and families need to be united, not divided. Your proposal could lead to blood in the streets.
- NS With respect, I don't believe that you understand the nature of the deposit. To operate effectively, you cannot cherry-pick the High Grade / Low silica areas. This would be extremely wasteful and would shorten the life of mine.
- JB I am happy to look at any way forward, but it would not appeal to my investors.
- JS I am not prepared to consider your application for an MDL at this stage. Please consider my recommendations and you need to follow up this discussion with my Director Mr Graeme Albion.
- END.

3. Email correspondence between John Benson and Director General Edwards



Aurukun Project: ABD

0

Dear John

Thank you for your continued interest in the Aurukun bauxite resource.

Development of the Aurukun bauxite resource has potential to significantly improve the opportunities for the people of Aurukun and I can assure you that it remains the government's objective that these opportunities are fully realised. The government is determined to ensure that the development rights are granted to a proponent that not only shares its objective, but is also both capable of and committed to, early development of the resource.

As I mentioned at our meeting, a number of companies have approached the government with a view to securing the development rights. Given this high level of interest we are carefully considering the process that will be used to select a preferred proponent in order to ensure fairness and equity to all parties. I expect that we will be in a position to advise you of the process to be used in the coming weeks.

In the meantime, if you have any questions please contact Graeme Albion on telephone 3452 7272.

Regards

David

David Edwards
Director-General
Department of State Development, Infrastructure and Planning
Queensland Government

tel
fax
post PO Box 15009 City East Qld 4002
visit Level 12, 100 George Street, Brisbane

www.dsdip.qld.gov.au

Please consider the environment before printing this email

Great state. Great opportunity.

From:
Sent: Tuesday, 22 July 2014 9:31 AM
To: David Edwards
Cc: Nick Stump; Andrew Tod
Subject: Aurukun Project: ABD

Dear David

Thank you for making time to meet with Nick, Andrew and myself, on Thursday last week, to discuss Aurukun Bauxite Development Pty Ltd's (ABD) proposal for the development of the bauxite resources within RA315.

We appreciated the contributions from Dennis, Darcey and especially Graeme who had given up some of his vacation time to attend the meeting.

ABD is keen to get this project up and running as soon as possible. ABD is in a position to lodge a Mineral Development Licence Application for the area of RA315 covered by the "Chalco Lease" within seven days subject to signing an "Aurukun Agreement" with your Department. As there are multiple parties competing for this area, you have asked ABD to wait until the Government has put in place a process for the evaluation of the various proposals. We are of course happy to comply with your request. However, we are seeking your assurance that this process will be expedient and all proposals will be dealt with solely on their merits especially with regard to the benefits provided to the Traditional Owners and the local indigenous community.

We understand that Graeme will document the evaluation criteria and process when he returns from leave at the beginning of August. Should it be considered to be appropriate, we would be happy to work with Graeme to develop a process as quickly as possible.

ABD looks forward to working with your Department to expeditiously develop the Aurukun bauxite resource for the benefit of the traditional owners, the local indigenous community and the State.

Should you, or your Department, have any questions or require additional information please do not hesitate to contact myself, Nick or Andrew.

Yours sincerely

John Benson

John Benson

Managing Director

Aurukun Bauxite Development

Pty Ltd

m:

e:

4. Government Letter to AIR regarding Glencore award of Preferred Proponent status



Department of
**State Development,
Infrastructure and Planning**

28 AUG 2014

Our ref: OUT14/7298

Your ref:

Australian Indigenous Resources Pty Ltd
Unit 71 - Newhaven Apartments
278-284 Sussex Street
Sydney NSW 2000

By email:

Dear Sir

We refer to the Request for Detailed Proposal issued by the State on 19 April 2013 (RFDP) and the State's determination not to continue with the Competitive Bid Process in March 2014.

Unless the context requires otherwise, capitalised terms in this letter have the same meanings as the definitions set out in the RFDP.

The State wishes to advise that:

1. it is reinstating the Competitive Bid Process; and
2. based on the responses received by the State in response to the RFDP and having regard to the interest expressed by other entities in developing the Aurukun Project, the State has selected Glencore International AG as the Preferred Proponent for the Aurukun Project.

The State wishes to recognise and thank Australian Indigenous Resources Pty Ltd for the considerable amount of work undertaken by it in preparing and submitting its Response to the RFDP and its continuing interest in the development of the Aurukun Project.

Yours sincerely

Graeme Albion
Director
Aurukun Project

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100 George Street Brisbane
PO Box 15009 City East
Queensland 4002 Australia
Telephone +61 7 3227 8548
Website www.dsdlp.qld.gov.au
ABN 29 230 178 530

5. Government Letter to ABD regarding Glencore award of Preferred Proponent status



28 AUG 2014

Our ref: BGC14/7289
Your ref:

Department of
**State Development,
Infrastructure and Planning**

John Benson
Aurukun Bauxite Development Pty Ltd

By email:

Dear Sir

We refer to our recent discussions regarding Aurukun Bauxite Development Pty Ltd's (ABD) interest in the development of the Aurukun Project.

As mentioned in those discussions:

- the State has been considering the process pursuant to which it may select a preferred proponent for the development of the Aurukun Project which best achieves the State's objectives; and
- that process may not include participation by ABD.

The State wishes to advise that:

1. the State has decided to reinstate the Competitive Bid Process referred to in the Invitation for Expressions of Interest for the Aurukun Project released by the State on 27 November 2012 and subsequent Request for Detailed Proposal issued by the State on 19 April 2013 (RFDP); and
2. based on the responses received by the State in response to the RFDP and having regard to the interest expressed by other entities in developing the Aurukun Project (including ABD), the State has selected Glencore International AG as the preferred proponent for the Aurukun Project.

The State wishes to recognise and thank ABD for its interest in the development of the Aurukun Project.

Yours sincerely

Graeme Albion
Director
Aurukun Project

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100 George Street Brisbane
PO Box 15009 City East
Queensland 4002 Australia
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6. Glencore Statement to Noel Pearson Lateline Segment

NB: Glencore Statement is highlighted in the transcript of the Lateline Segment.

Interview Part Two: Noel Pearson, Indigenous leader

Australian Broadcasting Corporation

Broadcast: 20/08/2015

Reporter: Tony Jones

Tony Jones continues his interview with Noel Pearson and addresses the issue of the community at Aurukun in far north Queensland which is involved in a major mining battle with the state Labor Government.

Transcript

TONY JONES: Noel Pearson, we're gonna hold you there for a moment while we look at a piece we prepared on another issue about which you've got serious concerns.

That other issue involves a community at Aurukun on Cape York Peninsula. Right now the Wik and the Wik Way people there are involved in a major battle with the state Labor Government. It involves the Queensland Government's decision to confirm the multinational Glencore mining company has the inside running to develop a massive bauxite deposit on the Wik people's land in Far North Queensland.

Now that decision ignores a plan bin the native title holders to sign sign an Indigenous land use agreement with Aurukun Bauxite Developments which offered local people a share in the company, jobs and boardroom representation. The move has incensed the native title holders, who say the dispute will have to be decided in the High Court.

LLYLE KAWANGKA, WIK AND WIK WAY DIRECTOR: We're not gonna lay down for the Government because it's a big company like Glencore and Government who stand over little community like Aurukun and let it - we're not gonna lay down for it. We're gonna stand up like the other Wik people who done before us.

TONY JONES: Noel, there've been concerns for a long time. The Queensland Government has excluded native title holders from mining ventures. The issue's recently come to a head over the bauxite mine in Aurukun. What's the situation now as you understand it?

NOEL PEARSON: Well, the Aurukun people of course are the Wik people, the subject of the most famous mainland native title case from 1996. They have obtained native title over all of their traditional lands in Western Cape York, including this contested area where the Queensland Government gave the multinational company Glencore exclusive rights through some surreptitious overnight deal done in 24 hours by the previous state government. And the great unfortunate thing that's now happened, it's very clear that the new Labor minister has simply said, "Well, this deal was very shoddy, but I'm not willing to overturn it and I'm willing to live with this decision that was made by the previous Campbell Newman Government."

TONY JONES: Is there any evidence of machinations behind the scenes?

NOEL PEARSON: Who has Minister Lyneham been lobbied by in relation to this decision? There's real questions about what influence has he been subjected to such that they're unprepared to change what was clearly a farcical decision by the previous government. And Tony, essentially, the traditional owners have now gone to court. They've placed a writ in the High Court and the High Court has agreed to hear it. This is essentially Wik Part II.

TONY JONES: Well, I mean, it's different in the sense that what they want is the right to participate in, even control the development of the mine themselves and that a proposal has been put up along those lines. Is it a serious proposal? Do the community - is there the

expertise in the community? Is there the funding available to get a mine up? Is - there are all of these critical questions.

NOEL PEARSON: Yeah. This is a serious proposal. Nick Stump is the chairman of the bid proposal. He's a former CEO of Mount Isa Mines. He's a former CEO of Comalco in Cape York and indeed he was the chairman of the Australian Minerals Council in an earlier life. So we have one of the most eminent, experienced bauxite miners and miners in general leading the Aurukun board. He's playing a philanthropic role with the community. He's - and he is leading a serious team that has the money, the capability and the capacity to do this. But unfortunately, the Wik people have gotta kinda go back and repeat a High Court action ...

TONY JONES: Well this is in fact the third attempt at it, isn't it?

NOEL PEARSON: Absolutely and this - you know, the fact that we've had native title, Mabo settled in relation to all of that land on Western Cape York Peninsula for this Labor Government in Queensland seems to count to nought as a matter of social justice. And they believe that a really unseemly process undertaken by the previous LNP government should be allowed to stand.

TONY JONES: Is it possible - is it possible - and I s'pose you'd need the High Court to rule on this, but is it possible to unwind Glencore's - in effect the agreement that Glencore has with the Queensland Government to go ahead with this mine to develop themselves to the exclusion of the Wik people's control over the development?

NOEL PEARSON: Oh, it's completely - it's completely possible. It's within the power of the Queensland Government to overturn what was done by the previous government. We get a very clear indication, however, that the minister might have been subject to lobbying and this is compounding an injustice to the Wik people because ...

TONY JONES: Are you suggesting there should be an investigation into that possibility?

NOEL PEARSON: Oh, you know, we're asking questions about who has made representations on behalf of Glencore to him. We know, for instance, that Glencore has been paying local Indigenous people to act for them on the ground in the community up there, to divide traditional owners. We know for a fact that they have been paying individual Wik people to act on their behalf. And indeed, one of the people that Glencore was paying was also being paid by the minister's department. At the very same time, over these recent six to nine months, Glencore and the state department have been paying the same local people to play a divide-and-rule game between traditional owners on the ground.

TONY JONES: A final question on this: how much of a game changer would it be to have a mine of this size and scale, a development of this nature actually run effectively by the Wik elders and the management committee under them?

NOEL PEARSON: Oh, the Aurukun community along with another community in Queensland are the most disadvantaged communities in Australia. There are a whole lot of social problems, health problems, problems with children. These are the most - these communities are riven with misery. And so to have - to own, to have part ownership of an enterprise that can generate jobs for adults, training opportunities for young people, and, you know, pathways for young children that really do well in the school - the school at Aurukun is really now starting to show bloom, blooming flowers, but I want those young Wik children to aspire to running and operating their own mine. It would be completely transformational.

TONY JONES: Noel Pearson, we'll have to leave you there. We thank you very much for joining us.

NOEL PEARSON: Thank you very much, Tony.

TONY JONES: And we did of course approach both the Queensland Government and Glencore International for a response to Noel Pearson's comments. As yet we've had no response from the Queensland Government. Glencore told us it strongly believes in the importance of maximising opportunities for local economic participation in the project, if it is to proceed. The company's full statement can be found on our website.

EDITOR'S NOTE: On August 21, 2015, Anthony Lynham's ministerial office provided the

following statement. Also below find the full statement from Glencore.

STATEMENT FROM THE MINISTER ANTHONY LYNHAM: The previous LNP Government conducted a competitive bid process for the Aurukun bauxite project, in which ABD and Glencore both provided bids for assessment. I am advised that this assessment was extensive and involved independent non-government legal advisors and international experts in bauxite mining.

The previous LNP Government entered into the Aurukun agreement with Glencore as the preferred proponent on 5 January 2015.

There have been some allegations that the selection process was unfair and that the decision should be reviewed.

The Palaszczuk Government has independent legal advice about the process.

The competitive bid process will not be re-opened. Glencore will proceed.

I encourage native title holders through their representative, NAK, to engage with Glencore and work together on a brighter, more prosperous future for the Aurukun community.

STATEMENT FROM GLENCORE: Glencore is very proud of the role our business plays in creating value and lasting benefits in Australia. We take any allegations made about our business, or how we conduct business, very seriously. Recent comments made to the media, by media commentators and to members of the Aurukun community about Glencore and our Aurukun Bauxite Project are very concerning. We would like to set the record straight and address a number of claims that are utterly false;

1. While Glencore respects Mr Noel Pearson as an important Indigenous leader in Australia, we reject any insinuation there has been improper engagement by Glencore with any government representative or Aurukun community member (ABC Lateline 20/08/15). Glencore does not, and will not, engage external parties to lobby for or promote the project on our behalf, in Aurukun or with Government. We employ more than 18,000 people across Australia, 50% of our workforce is in Queensland working across our coal, copper and zinc operations. We engage openly and transparently with all of our key stakeholders, including communities and members of government, to provide regular updates on our operations and projects. Over the past six months we have acquired goods and services from a range of locally owned businesses in Aurukun. All of our engagement with community members is done directly and in accordance with Glencore's global corporate Code of Conduct.

2. Glencore participated in an open, competitive and merit-based tender process. We successfully won the right to develop the Aurukun bauxite resource based on the merit of our project proposal. Over the course of six months in 2013, Glencore participated in an open and competitive bid process in respect of the Aurukun bauxite resource. We submitted a robust and credible proposal that was considered to be superior to any other proposals made. Our business has a proven track record of investment and has developed a global network of expertise in mining, logistics and marketing. Since 2007, our business has invested over \$21 billion into Australia; building new operations and sustaining existing operations, plants and infrastructure. That equates to an average rate of investment of roughly \$2.6 billion every year or \$7 million dollars a day, every day for the past eight years.

3. We have been talking about our project for over two years and continue to have very positive and constructive discussions with the community and traditional owners in Aurukun. Our project pathway is based on a foundation of strong and early direct community engagement. Since our first visit to Aurukun in 2013, we have been committed to openly and transparently discussing the potential impacts and benefits of the project with the community.

2. Glencore recognises that the direct involvement of traditional owners and community members is vital to the future success of the project. Our approach has been to prioritise those families and clans who can speak for the country within the potential project area. Glencore has been welcomed to Aurukun on many

occasions and has enjoyed the opportunity to talk with the families who are the traditional owners of the land where the resource is located. We know that this project will not succeed without their direct involvement and their support for our work. We strongly believe in the importance of maximising opportunities for local economic participation in the development and operation of the project, if it is to proceed.

4. We encourage open and robust discussion regarding the project, but believe it is important for all stakeholders to declare any commercial agreements or conflicts of interest. We welcome the recently stated desire of the directors of Ngan Aak Kunch (NAK), the Indigenous corporation that holds native title on behalf of the Wik and Wik Way people, to seek independence from the Cape York Land Council (CYLC). We think this is appropriate given what we understand to be the commercial interests of persons associated with CYLC in Aurukun Bauxite Development Pty Ltd, a company associated with a previous unsuccessful bidder. Glencore calls on all parties commenting on the Aurukun bauxite project to publicly disclose any conflict of interest they may have, so that it is clear when people are making comments as recognised Aurukun native title holders on behalf of the community, or as individuals with a related commercial interest.

(Obtained from: <http://www.abc.net.au/lateline/content/2015/s4297344.htm>)

7. ABD's response to Glencore's Statement to Lateline Segment, 24th August 2015.



MEDIA RELEASE: NICK STUMP CHAIRMAN AURUKUN BAUXITE DEVELOPMENT PTY LTD

GLENCORE AND MINISTER LYNHAM COMPOUNDING THE SPIN

Response to media statements from Glencore International and Minister Dr Lynham in relation to Lateline interview with Mr. Noel Pearson, 20th August 2015.

Response to Minister Lynham's comments:

Aurukun Bauxite Development Pty Ltd (ABD) is a specific purpose Australian Company set up at the request of Aurukun Elders and Native Title Holders.

The Registered Native Title Holders over lands within RA315 are the Wik and Wik Waya people, represented by Ngan Aak-Kunch (NAK).

NAK have commenced proceedings to the High Court that will test the 'Aurukun Provision' in the *Mineral Resources Act 1989* (Qld). The 'Aurukun Provision' discriminates against the Native Title Holders of Aurukun, and the related probity provisions compound the offence.

The Newman government abused the purpose of the Aurukun provision by sidelining and discriminating against the indigenous native title holders, and this is the issue that will be tested in the High Court Case.

It is immoral for Minister Anthony Lynham to announce "Glencore will proceed" and that "The competitive bid process (for the Aurukun RA315 lease area) will not be re-opened". Minister Lynham fails to acknowledge that the case is proceeding to the Full Bench of the High Court. His comments and actions could be seen as prejudicial to those proceedings.

This injustice does not sit comfortably with the Minister's statement last week that, "We are an open and democratic community in Queensland and in Australia. By restricting people and ripping their rights away is hardly the way we should go as a democracy here in Queensland or in Australia." (*Brisbane Times*, Amy Remeikis, 20 August 2015)

On 19 September 2014, ABD executed an Indigenous Land Use Agreement with NAK (now registered as QI2014/087). The agreement was reached after four years of intensive negotiations, meetings, and planning with the native title holders.

The issuance of a section 29 notice (expedited procedure process) in April 2015, is an attempt by the current government to circumvent a registered ILUA, and sets a new standard for the contempt of the native title process.

For over 12 years the Queensland Department of State Development has failed to deliver opportunities, and has broken promises to the Native Title holders. In light of these wasted years the initiative of elders and native title holders to seek a new direction for development incorporating indigenous ownership deserves full consideration.

Response to Glencore's comments

In contrast to Glencore, which is driven by returns to shareholders (mainly overseas), ABD has a singular mission. Our company, which is partly owned by the Native Title Holders, aims to break the cycle of failure to deliver Wik People out of poverty. We believe that creating Indigenous Enterprise in the way proposed by ABD in its agreement with NAK will, in the end, form an essential part of future projects in Australia.

Glencore may wish to rest its case on 'big is better', however this has not been the experience of the Wik and Wik Waya Native Title Holders of Aurukun.

In fact, for over 40 years, successive Queensland Governments have granted Mineral Development Licences to multinationals including Pechiney, Alcan, Comalco and Chalco, but sadly no development, no jobs and no benefits have been forthcoming.

The State's Objectives and Requirements, as set out in Section 6 of the Request for Detailed Proposal (RFDP), calls for Preferred Proponents to present:

- "A copy of its offer to, or final negotiating position reached with, NAK on behalf of the Native Title Holders" and "ASC on behalf of the Aurukun community".
"the commitments contained within the offer or final negotiating position will be incorporated into the Aurukun Agreement and that Preferred Proponent will not be able to later reduce or remove any elements of the commitments".; and
- "a clear critical path timetable" and "a methodology to analyse and resolve key issues"... so that the Aurukun Project is delivered "in a timely manner".

According to NAK, none of the above has been delivered to them and definitely no details have been shared with the NAK Board or any Native Title Holders.

Glencore had ample opportunity to submit a Minimum Benefits Package to the Native Title holders. They simply chose not to do so.

It seems they were right, as it appears Government was prepared to waive this key precondition.

At a recently held Board meeting, Friday 14 August 2015, NAK reconfirmed their links to the CYLC.

Cape York Land Council has used their best endeavours to advance the wellbeing of Wik and Wik Way People, despite Government rejection of applications for funding.

ABD takes great offence to the suggestion that persons associated with CYLC have a commercial interest in the Aurukun Bauxite Project. This association is emphatically denied.

All Directors of ABD and many senior executives have provided their generous services over the past 4 years on a pro bono / honorary basis. The suggestions that anyone associated with the CYLC, NAK, Cape York Institute or Balkanu are either direct or indirect shareholders of ABD or its parent AIR is emphatically denied. As notified to ASIC, two young Wik people are board members of ABD and have every right to express their opinions without qualification.

Seeing the gloves are off with Glencore, here are a few questions we would like to ask:

- a) Regarding related parties, what role is your partner Olag Depriska, the Russian oligarch, and his company Rusal playing either now or in the future with this project?
- b) Your CEO Ivan Glasenberg has repeatedly been quoted over the past few years that Glencore is not interested in greenfield projects. How do you reconcile these statements with this project?
- c) When did Glencore, by itself, not with others, last undertake a greenfield bauxite project of this size, and what was the benefits package for the indigenous peoples?
- d) When we Google Glencore/Indigenous People we are alarmed at the extensive claims of grief you have created throughout the world. We have received in recent times, unsolicited mail from local indigenous people adjacent to your existing mines that are not flattering. What indigenous initiatives have you undertaken in Australia over the last two years?
- e) Does Glencore believe that it is acceptable and a transparent process to submit and have a Mineral Development Licence accepted during a caretaker period of Government – especially when such an application was done without knowledge and approval of the Registered Owners?

FOR MORE INFORMATION: NICK STUMP | M: