

**DECLARATION APPLICATION UNDER
SECTION 44F(1) OF PART IIIA OF THE
TRADE PRACTICES ACT 1974**

by

ROBE RIVER IRON ASSOCIATES

relating to the

RAIL TRACK SERVICE

provided by

HAMERSLEY IRON PTY. LIMITED'S

RAIL INFRASTRUCTURE FACILITY

September 1998

CONTENTS

224

GLOSSARY OF TERMS

1. APPLICANTS' DETAILS.....	1
2. PROVIDER DETAILS.....	3
3. SERVICE REQUIRED.....	4
4. DESCRIPTION OF THE FACILITY	5
5. REASONS FOR SEEKING ACCESS	8
6. SIX ESSENTIAL CRITERIA UNDER PART IIIA.....	12
7. HOW ACCESS WOULD BE GAINED	45
8. ANY PRIOR EFFORTS TO NEGOTIATE ACCESS.....	47
9. DURATION OF DECLARATION.....	50
10. OTHER RELEVANT MATTERS	50

ANNEXURE 1	Summary of RRIA's Iron Ore Operations
ANNEXURE 2	Map - Iron Ore Deposits in the Pilbara Region
ANNEXURE 3	Environmental Review and Management Programme for West Angelas Project - Summary Document
ANNEXURE 4	Map - Central Pilbara Rail Infrastructure Facilities
ANNEXURE 5	Special Lease 3116/4984
ANNEXURE 6	Special Lease 3116/11869
ANNEXURE 7	Letter from Department of Resources Development to RRM
ANNEXURE 8	GHD Study - Operational Evaluation of HI Railways Access
ANNEXURE 9	Table - Summary of Government Contributions by RRIA from 1972 to 1997
ANNEXURE 10	Copy of Hamersley State Agreement
ANNEXURE 11	Operational Procedures for Use of Hamersley Rail Infrastructure Facility

GLOSSARY OF TERMS

223

ACCC	:	Australian Competition and Consumer Commission
Al ₂ O ₃	:	Alumina
BF	:	blast furnace
BHPIO	:	BHP Iron Ore Division
BOF	:	basic oxygen furnace
CPA	:	Competition Principles Agreement
CTC	:	centralised traffic control
Dollars or \$:	Australian Dollars, unless stated otherwise
DRI	:	direct reduced iron
EAF	:	electric arc furnace
Fe	:	Iron
Hamersley or HI	:	Hamersley Iron Pty. Limited
Hamersley State Agreement	:	the agreement scheduled to the Iron Ore (Hamersley Range) Agreement Act 1963 (as amended)
Hancock Prospecting or HPPL	:	Hancock Prospecting Pty. Ltd.
Hancock Joint Venture	:	joint venture between Hancock and Iscor
HBI	:	hot briquetted iron
hi-rail	:	road motor vehicle capable of being driven on rail tracks
HITC	:	Hamersley Iron Train Controller
HI Yandi	:	Hamersley's Yandicoogina iron ore development (not to be confused with BHPIO's Yandicoogina development)

Iscor		Iscor Ltd, joint venturer with Hancock Prospecting regarding Hope Downs iron ore development feasibility study
KP	:	kilometre peg
locomotive	:	self propelled track vehicle
M	:	Million
MAC	:	Mining Area C iron ore deposit, owned by BHPIO
Mt	:	Million tonnes
Mtpa	:	Million tonnes per annum
NCC	:	National Competition Council
OH	:	open hearth
Robe	:	Robe River Mining Co. Pty. Ltd., Manager for RRIA
rolling stock	:	rail track vehicles, not self propelled eg. ore wagons, flat cars, fuel cars
RRIA	:	Robe River Iron Associates
RTC	:	RRIA Train Controller
SiO ₂		Silica
TC	:	Train Controller
TPA	:	Trade Practices Act 1974
train cycle	:	one loaded train and one empty train on return journey
trains	:	locomotive or coupled locomotives with or without rolling stock attached thereto
Yandi	:	Yandicoogina iron ore mine owned by BHPIO (not to be confused with HI Yandi)

INTRODUCTION

Robe River Iron Associates (**RRIA**) applies to the National Competition Council, pursuant to section 44F(1) of Part IIIA of the Trade Practices Act 1974, for a recommendation for the declaration of a service, as set out in this application.

1. APPLICANTS' DETAILS

Name of Applicants

- 1.1. The applicants are the Participants in Robe River Iron Associates which is the registered business name for the unincorporated Robe River Joint Venture¹, comprising:

ROBE RIVER MINING CO PTY LTD ACN 008 694 246 of 9th Floor, 12-14 St George's Terrace, Perth, Western Australia;

MITSUI IRON ORE DEVELOPMENT PTY LTD ACN 008 734 361 of 24th Floor, Forrest Centre, 221 St George's Terrace, Perth, Western Australia;

NORTH MINING LIMITED ACN 000 081 434 of Level 6, 476 St Kilda Road, Melbourne, Victoria;

CAPE LAMBERT IRON ASSOCIATES a business carried on under that name by **NIPPON STEEL AUSTRALIA PTY LIMITED** ACN 001 445 049, **SUMITOMO METAL AUSTRALIA PTY LTD** ACN 001 444 604 and **MITSUI IRON ORE DEVELOPMENT PTY LTD** ACN 008 734 361 of 24th Floor, Forrest Centre, 221 St George's Terrace, Perth, Western Australia; and

PANNAWONICA IRON ASSOCIATES a business carried on under that name by **NIPPON STEEL AUSTRALIA PTY LIMITED** ACN 001 445 049 and **SUMITOMO METAL AUSTRALIA PTY LTD** ACN 001 444 604 of 24th Floor, Forrest Centre, 221 St George's Terrace, Perth, Western Australia.

The individual shares² of the Participants in the Joint Venture at the date of this application are:

¹ The Participants are associated together as an unincorporated Joint Venture for the purpose of mining, overland transportation, processing, and loading for shipment, of iron ore.

² The obligations of each Participant under the Joint Venture are limited to the portion of liability equal to that Participant's individual share and obligations are at all times several and not joint.

Robe River Mining Co Pty Ltd	30%
Mitsui Iron Ore Development Pty Ltd	20%
North Mining Limited	35%
Cape Lambert Iron Associates	5%
Pannawonica Iron Associates	10%

Management of RRIA Joint Venture

1.2. Robe River Mining Company Pty Ltd (**Robe**) is appointed as Manager for the Joint Venture³ and acts as agent for the Participants. Robe is bound by all agreements entered into, to the extent of its individual share as a Participant under the Joint Venture Agreement.

Applicants' Contact

1.3. The contact officers for RRIA in relation to this application are:

Primary:	Alternate:
Daryl Calvin,	Michael Hackett
General Manager, Finance and	Legal and Insurance
Administration,	Advisor
Robe River Mining Company Pty Ltd	Robe River Mining Company Pty Ltd
9 th Floor	9 th Floor
12-14 St George's Terrace	12-14 St George's Terrace
Perth 6000	Perth 6000
Western Australia	Western Australia
Phone: (08) 9421 4876	Phone: (08) 9421 4868
Fax: (08) 9421 4804	Fax: (08) 9421 4804
E-mail: daryl.calvin@north.com.au	E-mail: michael.hackett@north.com.au

Applicants' Address

1.4. The address of RRIA is care of:

Robe River Mining Company Pty Ltd
9th Floor
12-14 St George's Terrace
Perth 6000
Western Australia

³ As Manager, Robe is empowered to make applications, such as this application, on behalf of the Participants.

Applicants' Operations

- 1.5. RRIA is Australia's third largest iron ore producer and the fourth largest seaborne iron ore trader in the world. RRIA's principal deposits of pisolitic iron ore are located in mesa outcrops in the Robe River valley, in the Pilbara region of Western Australia, with the most significant being the Mesa J deposit. Resources are estimated at between 3 to 4 billion tonnes. A summary of RRIA's iron ore operations is contained in Annexure 1.

West Angelas Development

- 1.6. In March 1997, RRIA commenced a \$19.5 million feasibility study (**West Angelas Feasibility Study**) to investigate the potential for developing the West Angelas iron ore deposit, which is located about 100km west of Newman, as illustrated in Annexure 2.

The Marra Mamba iron ore formation hosts the West Angelas orebody. This orebody is of higher grade than the Mesa J deposit. Measured and indicated iron ore resources indicate that the two main West Angelas deposits, A and B, have a combined resource of almost 700 Mt of ore with an iron content greater than 60%.

For a summary and description of the West Angelas deposits, refer to the recently released Environmental Review and Management Program (**ERMP**) document summary, attached in Annexure 3.

Mine production at the West Angelas deposit is anticipated to commence in early calendar year 2001 at a production level of 7Mtpa building as markets for the West Angelas ore are established to 20Mtpa over a 6 to 10 year time-frame.

2. PROVIDER DETAILS

- 2.1. The provider of the service to which this application relates is Hamersley Iron Pty. Limited A.C.N. 004 558 276 (**Hamersley or HI**). Hamersley is also the owner of the facility to which this application relates.

Hamersley is 100% owned by the Rio Tinto Limited, the world's largest mining organisation which has its offices located at 6 St James's Square, London, England. Hamersley's head office is located at 22nd Floor, Central Park, 152 St George's Terrace, Perth, Western Australia.

Hamersley is Australia's second largest iron ore producer, the third largest iron ore producer in the world and the world's largest supplier of premium quality lump iron ore to integrated steel mills world wide⁴.

⁴ Western Australian Iron Ore Industry Review, Department of Resources Development, March 1998

HI owns, controls and operates the existing Paraburdoo, Mt Tom Price, Brockman N°2 and Marandoo mines, all located within the Pilbara region. All are served by Hamersley's 386km rail line from the Paraburdoo mining area through Mt Tom Price to the Hamersley Port at Dampier, and the spur rail lines to Brockman N°2 and Marandoo mines, as illustrated in Annexure 2.

- 2.2. Hamersley is currently developing its Yandicoogina deposit which is approximately 65km to the north east of RRIA's West Angelas deposit, as illustrated in Annexure 2 and which is expected to be an operating mine by mid 1999⁵. This project development involves an extension of Hamersley's rail line from Marandoo to Yandicoogina, which is currently under construction.

3. SERVICE REQUIRED

- 3.1. Section 44B of the TPA defines a "service" as:

"a service provided by means of a facility and includes:

(a) the use of an infrastructure facility such as a road or a railway line;

...

(c) a communications service or similar service;"

- 3.2. The service to which RRIA seeks access is the bulk iron ore rail track transportation service provided by the Hamersley Rail Infrastructure Facility, as defined in part 4 of this application (**Rail Track Service**). This should be distinguished from any rail haulage service which may be available in relation to this facility.
- 3.3. The Rail Track Service is required for use by both RRIA trains and by RRIA hi-rails only over that section of the Hamersley Rail Infrastructure Facility described in part 4 of this application.

The Rail Track Service comprises the use of an infrastructure facility, being the Hamersley Rail Infrastructure Facility mainline, yard track and maintenance support road, including the in-track fault detection and monitoring systems, and the use of a communications service being the train control systems, inclusive of two-way radio.

⁵ As for note 4.

- 3.4. The access sought by RRIA is the use of the Rail Track Service by RRIA trains laden with iron ore from RRIA's West Angelas minesite, travelling from the minesite to the RRIA's Port Walcott at Cape Lambert, and by empty RRIA trains on a return journey to the minesite.
- 3.5. During the initial start up period of the West Angelas development it is anticipated that the required access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility will be at the frequency of the equivalent of 1 train cycle per day of 200 wagons in each direction. This is based on RRIA's expectation of sales of Marra Mamba ore, and the resulting iron ore products, that can be obtained during this period.

As sales increase from a nominal 7Mtpa to say 14/20Mtpa the number of trains or train length will be varied to a maximum of the equivalent of 3 trains of 200 cars/day in both directions.

HI trains using these sections of the line are currently of 226 wagon length, and more than 2km in length, with each ore wagon having a nominal capacity of 100 tonnes. The mainline configuration can adequately cope with following train movements of 15 minutes separation⁶.

- 3.6. RRIA is not seeking the service provided by the HI locomotives, rolling stock or hi-rails. RRIA will provide its own locomotives, rolling stock, hi-rails and all necessary operational personnel.

4. DESCRIPTION OF THE FACILITY

Hamersley Rail Infrastructure Facility

- 4.1. The facility used to provide the Rail Track Service is the section of the standard gauge railway line owned and operated by Hamersley which runs approximately 300 kms in the Central Pilbara:
- (a) from the existing RRIA/HI overpass in the Millstream-Chichester National Park, near Emu Siding south through the Hamersley Range to the Rosella siding at the 250KP point of the mainline;
 - (b) then eastward from the Rosella siding through the existing railway formation to the HI Marandoo minesite; and
 - (c) from the HI Marandoo minesite out east towards Hamersley's Yandicoogina deposit, to the point where this line will intersect with the proposed RRIA rail line extending north from the West Angelas minesite (yet to be constructed)

as shown on the plan in Annexure 4.

⁶ "Hamersley Iron Pty Ltd, Resources - Technology - Operations", 1990.

The section of the facility referred to in paragraph (a) above is located on Special Lease for Mining Operations 3116/4984 (annexed as Annexure 5), and the section of the facility referred to in paragraphs (b) and (c) above is located on Special Lease 3116/11869 (annexed as Annexure 6), both granted pursuant to the Land Act 1933 and the Iron Ore (Hamersley Range) Agreement Act 1963.

The section of the facility referred to in paragraph (c) above currently is being extended further towards HI's Yandicoogina deposit, and will link the Yandicoogina deposit to the current end of the Hamersley Rail Infrastructure Facility at the Marandoo minesite. Construction is expected to be completed prior to the commissioning of the Yandicoogina mine in early to mid-1999. However as at the date of this application, the section of the facility referred to in paragraph (c) has been constructed, and is being used to transport track and other materials for the continuing construction of the extension of the facility out towards HI's Yandicoogina deposit.

4.2. This facility includes the following components:

- all aspects of the standard gauge rail line; including mainline, yard track, passing sidings, culverts, bridges and temporary diversion tracks;
- the rail line maintenance support road;
- all signs and signalling on the rail line;
- the HI train control system including two-way radio used by HI;
- the in-track fault detection and monitoring systems, built into the railway; and
- other facilities to provide the Rail Track Service safely.

This facility is referred to in this application as the **Hamersley Rail Infrastructure Facility**, and only includes a portion of the entire Hamersley rail system.

Mainline and Track Specifications

4.3. The rail line referred to in paragraphs 4.1(a), (b) and (c) is a single heavy duty (68kg/m) rail track with an axle load of 30 tonnes, concrete sleepers and passing sidings at approximately 20km intervals. The total length of the passing sidings is approximately 16km. The line is predominantly single track, with approximately 28km of double track.

Maintenance Support Road

- 215
- 4.4. The maintenance support road runs alongside the existing section of Hamersley Rail Infrastructure Facility mainline, as illustrated in Annexure 4 (support road). The maintenance support road allows maintenance crews and operational personnel to access all sections of the Hamersley Rail Infrastructure Facility, as well as allowing hi-rails to travel between different sections of the main line when trains are running. The maintenance support road is currently an unsealed private road, requiring a permit (issued by Hamersley) before access to it can be gained.

The maintenance support road is a necessary and integral component of the Hamersley Rail Infrastructure Facility, as it is essential to the safe operation of the Hamersley Rail Infrastructure Facility and to the safe operation of trains and rolling stock on the Hamersley Rail Infrastructure Facility. It is also the only method by which trains and rolling stock on the Hamersley Rail Infrastructure Facility can be accessed. The road is not used for any purposes other than this safety purpose and the maintenance and support of Hamersley Rail Infrastructure Facility.

Signs and Signalling

- 4.5. The Hamersley Rail Infrastructure Facility includes standard signs and signalling, as is required within and used by the Australian rail industry. These signs and signals are located at appropriate locations adjacent to the mainline and are connected electronically to the Hamersley train control system.

Train Control System

- 4.6. Trains on the Hamersley Rail Infrastructure Facility are controlled, monitored and coordinated by an electronic train control system which links a Train Controller to the cab and driver of each HI locomotive, and is augmented by a short-wave two-way radio communication facility. Currently, the train control system is the Centralised Traffic Control (CTC) System, which is computer controlled with appropriate personnel operation and monitoring, along with the two-way radio facility based at Hamersley's rail administration buildings, at Dampier.

It is possible that the CTC System may be replaced by an In-Cab Signalling System at some future stage. RRIA seeks access to the existing system, as it may be modified or replaced, for control of RRIA trains travelling on the Hamersley Rail Infrastructure Facility.

Track Fault Detection and Monitoring Systems

4.7. In track monitoring is carried out by:

- 'hot box' detectors to identify high bearing temperatures on wagons;
- asset protection equipment to locate any dragging or derailed equipment;
- stream flow detectors to warn of high water levels; and
- broken rail detection systems.

These maintenance and monitoring systems are built into the mainline, and include sub-stations located adjacent to the mainline, containing equipment linking the systems to Hamersley's rail administration buildings.

Facilities not subject to this application

4.8. RRIA will provide all locomotives, rolling stock and operational personnel required to run RRIA trains on the Hamersley Rail Infrastructure Facility. RRIA will also provide all hi-rails, other vehicles and personnel for maintenance and support of RRIA's trains and rolling stock using the rail maintenance support road. RRIA will provide its own train control system for all RRIA trains travelling on RRIA rail track, and does not seek access to the HI train control system in that regard.

5. REASONS FOR SEEKING ACCESS

5.1. RRIA plans to bring the West Angelas mine project into production by no later than the year 2002. The lump and sinter fines products from the mine will be exported through expanded processing and port facilities at Cape Lambert/Port Walcott.

Significance of Development of West Angelas

West Angelas is strategically situated in the Central Pilbara in close proximity to the Asian markets. The ore contains high calcined iron levels and is low in alumina and silica. The project will enable RRIA to supply a high grade lump and fines iron ore product. This high quality ore will enable RRIA to penetrate markets that were previously inaccessible due to the lower quality of the Mesa J ore.

Development of the Marra Mamba ore from West Angelas will give RRIA a broader product range, and subject to the successful conclusion of a current study, could allow RRIA to re-open its pellet plant at Cape Lambert using the higher grade feed available from West Angelas, if sufficient pellet sales can be obtained to make the pellet project financially viable.

The strategic value of RRIA offering a third source of lump ore from the Pilbara will be very much welcomed by the international steel producers as it offers steel producers, particularly those based in Asia, an additional source of lump. This is critical during times of supply sourcing difficulty.

Nature of the West Angelas deposit

The West Angelas project has been based on a 20Mtpa output, given a life of mine in excess of 20 years from the two larger mine areas, Deposits A and B with further drilling in other satellite deposits likely to extend the mine life. The feasibility study is based on a 7Mt production rate in the first year gradually building to 20Mtpa over a 6-10 year timeframe.

While the current West Angelas Feasibility Study is confined to a lump/fines project, a further study is underway for the possibility of producing pellets from the West Angelas fine material at Cape Lambert.

Requirements for Development of West Angelas

The current nominal capacity of Port Walcott, the port for the Cape Lambert ore processing operation, is 32-33Mtpa. However, if a decision is taken to develop West Angelas, the expansion of Port Walcott would also become necessary. Modifications being examined include the extension of the ore wharf, installation of a second shiploader with feeder conveyor, dredging the ship berth basins and widening the exit channel entry for a distance of approximately one kilometre. Ore processing requirements at Cape Lambert will include a second car dumper, expansion of product stockpile areas, a re-screening plant and extension to rail workshop areas.

In addition, ore mined from West Angelas must be transported from the minesite north to Cape Lambert, in order to be processed and loaded for shipment to market. Without this economic transportation of ore to processing and port facilities, the West Angelas project could not be developed.

Transportation Options

- 5.2. The only commercial way of transporting large tonnages of material, such as bulk iron ore, over significant distances is by rail, and once built, that railway has carrying capacity for extremely large tonnages for many decades. The ideal situation in terms of utilisation is having a single railway which services a number of operating mine sites.
- 5.3. The alternatives to the use of rail to transport West Angelas iron ore to Cape Lambert are:
- (a) to construct a pipeline for slurry pumping⁷ of the iron ore which is considered impracticable because of the inadequate availability of water for slurry pumping, the high cost of the process, and that pumping of the ore would also degrade the lump particles; and
 - (b) road haulage of the ore from West Angelas to Cape Lambert, which would involve negotiating access through the Karijini National Park and would be uneconomical due to the substantial amount of trucks and personnel which would be required, as well as the significant road maintenance costs which RRIA would incur.

From a demand perspective, the market for bulk iron ore transportation is limited to the market for rail transportation. Other than Samarco in Brazil, every other major iron ore producer with significant distance between mine and port, utilises rail transportation. In Australia, rail transportation is used exclusively by the major iron ore producers. Rail transport is the most cost effective, reliable on-time delivery with minimum degradation to the iron ore.

- 5.4. There are three main options available to RRIA in utilising rail transportation for West Angelas iron ore:
- (a) RRIA could construct its own separate rail line in parallel with the section of the Hamersley Rail Infrastructure Facility, which would involve a large part of the separate rail line constructed (approximately 280 kilometres in length) running within 2 to 3 kilometres of the existing Hamersley Rail Infrastructure Facility;
 - (b) RRIA could construct a dual track alongside the Hamersley Rail Infrastructure Facility by constructing links between the existing passing sidings of that rail line, such that the passing sidings all effectively become a separate and additional track, not reliant on the mainline of the Hamersley Rail Infrastructure Facility; or

⁷ Pumping of low particle size iron ore in a high pressure and high velocity volume of water along a pipeline from a minesite to a destination.

- (c) RRIA could use the existing Hamersley Rail Infrastructure Facility, without any modification, except as required to allow RRIA access (as set out in part 7 of this application), or any additions to existing passing sidings in order to accommodate the increased frequency of trains utilising the mainline.
- 5.5. Use of BHPIO's railway system from BHPIO's Yandi mine to Port Hedland has been considered and discounted as a viable option for transporting RRIA's West Angelas ore because:
- (a) this would require negotiating access to the service provided by HI's railway system from the junction of the West Angelas spur to the junction of the HI Yandi rail line with the BHPIO rail line as well as to the service provided by the BHPIO rail line through to Port Hedland;
 - (b) Port Hedland is not RRIA's port and is not where RRIA's processing and shiploading facilities are located (and it would be uneconomical to construct rail access from Port Hedland to Cape Lambert); and
 - (c) using Port Hedland would involve constructing processing and stockpiling facilities, whereas these are already in place (albeit requiring expansion) at Cape Lambert.
- 5.6. As set out below, the most economically viable option is that contained in paragraph 5.4 (c).
- 5.7. In establishing a new mine such as West Angelas into the market, there is the commercial reality of establishing and then building a market share. This means significantly under-utilised rail infrastructure in the early years of the mine's operational life.

For the West Angelas project, a new single purpose railway line from West Angelas to the RRIA port facilities will cost around \$1M per line kilometre, and may be more depending upon the number of sidings required. In the first year of mine production, it will carry less than 1 train cycle per day. Even at the full projected output from West Angelas of 20Mtpa, a single purpose RRIA railway would not average much more than 3 trains cycles per day.

- 5.8. As RRIA is able to provide its own locomotives and wagons. It is significantly more desirable, both commercially and practically, for RRIA to provide its own rolling stock to access the Rail Track Service on the Hamersley Rail Infrastructure Facility to transport West Angelas ore to link with RRIA's existing own rail facilities.
- 5.9. The State Government, through the Department of Resources Development, strongly supports the sharing of rail infrastructure in the development of the Pilbara region, as is evident from the letter contained in Annexure 7. This position is also maintained by the Department of Resources Development,

which is charged with overseeing major resources and infrastructure development in Western Australia. For this reason, and those set out in part 6 of this application, the linking of the existing passing sidings of the Hamersley Rail Infrastructure Facility to form a dual track is a less preferable option when the capacity of the existing facility can adequately cope with the requirements of RRIA.

Conclusion

- 5.10. Rail transportation is the most realistic and practical option available for RRIA to transport iron ore from the West Angelas minesite to Cape Lambert. Although there appear to be four theoretical rail options available to RRIA, the most realistic and only economically viable option is access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility.

6. SIX ESSENTIAL CRITERIA UNDER PART IIIA

The NCC cannot recommend that a service be declared unless it is satisfied regarding all of the matters set out in section 44G(2).

6.1. Promotion of competition in a market

6.1.1 Section 44G(2)(a) of the TPA requires the NCC to be satisfied that

"access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service;"

Market for the Service

6.1.2 The market in which the Rail Track Service is provided is the market for the use of rail infrastructure for the transportation by train of iron ore or other minerals from minesites to ports or processing facilities within the central Pilbara region of Western Australia.

This market does not extend to other forms of commercial or industrial transport infrastructure, such as air transport facilities or road transport facilities, as these facilities or methods of transport are not practically or economically viable, or safe, to transport iron ore or minerals.

The market for a bulk iron ore rail track transportation service has certain special characteristics. The market is for rail track service within the Central Pilbara as described in Annexure 4.

This market does not extend to the provision of a rail haulage service itself, nor to the use of the rail infrastructure for passenger

transportation purposes, as this would be inconsistent with the design, safety and operational aspects of the rail infrastructure.

This application relates to obtaining access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility in the Central Pilbara. It is access to the Rail Track Service which is the key to the promotion of effective competition in associated markets. This application seeks to isolate and gain access to the natural monopoly segment of the vertical markets which facilitate the transport of iron ore in the Central Pilbara.

It is clear from previous NCC decisions regarding rail infrastructure, that there is a distinction between the market for rail track infrastructure and the associated vertical market for rail haulage. The NCC has clearly demonstrated that the essential characteristics of the rail track service market, with its very high fixed (sunk) costs and low operating costs is a different structural market from the market for rail haulage, which is characterised by a high degree of contestability. The market distinction between rail track in the Central Pilbara and the rail haulage market would easily pass the Ergas test for establishing markets within vertically related services as discussed in the Carpentaria Transport case.⁸

This application is in the spirit of the initial Hilmer Report, that the access provisions apply to isolate the market which has the essential characteristics of a natural monopoly and unlock the benefits to promote competition. Indeed the rail track market is specifically mentioned both in the Hilmer Report and Part IIIA of the TPA as a market for which access provisions should apply.

Hamersley is currently the sole user of the Hamersley Rail Infrastructure Facility solely for its own business activities. Hamersley currently does not provide any access to the Hamersley Rail Infrastructure Facility by third parties. However, pursuant to the Hamersley State Agreement, which gives Hamersley the necessary approval to operate the Hamersley Rail Infrastructure Facility, Hamersley is expressly required to "transport the passengers and carry the freight of the State and third parties' on the railway". Therefore, although it is a service which is not currently used, Hamersley does notionally provide a rail haulage service for the transportation of iron ore, other minerals or general freight from minesites to ports or processing facilities. However, there is no mechanism under the Hamersley State Agreement nor under any other State-based regime

⁸ Carpentaria Transport application for declaration of Queensland Rail services between Brisbane and Cairns, particularly at page 40 of NCC Reasons for Decision.

for fair commercial terms to be reached for use of the Rail Track Service.

Promotion of Competition in at least one market

6.1.3 Access to the Rail Track Service will provide RRIA, and any other party wishing to seek access to the service, with transport of iron ore from a minesite to processing and port facilities, and therefore allow them to compete in the:

- a) iron ore product market (inclusive of the iron ore development, mining, processing and sales markets); and
- b) market for rail haulage in the Central Pilbara.

As a result of RRIA, or any other party, competing in these markets, competition in both of these markets will be promoted and, ultimately, increased, as set out in detail below. In addition, competition will also be promoted in a variety of upstream and downstream markets, such as the mining equipment supply and contracting market, mining support markets, and markets for iron ore embodied products.

Iron Ore Market - Background - World

6.1.4 In today's iron ore market place approximately 75% of the world's iron ore is produced by over sixty mines with no less than 15 merchant iron ore suppliers, each having capacities in excess of 10,000,000 tonnes per annum. Approximately 45% of all iron ore produced in the major iron ore producing countries of Brazil, Australia, Canada, and India is exported to distant steel centres in Asia (Japan, China, South Korea, and Taiwan), Europe (Germany, Italy, France, UK, etc.), and the USA. The market for iron ore has never been more fiercely contested.

Similarly, the quality (ore chemistry, structure, etc.) must be such that it is not only acceptable to the buyer but also have attributes which make it superior to other ores.

All of the above make the iron ore market place highly competitive and expensive to operate in.

Steel mills throughout the world are becoming more aware of ore quality than in the past - they are now insisting not only on high quality ores (high iron and low gangue minerals such as silica and alumina) but also on consistent quality and reliability which guarantee them uniform blending with ores from other sources.

The price the buyer is prepared to pay reflects in part the ore quality as mentioned above. Those ore suppliers who have less desirable ores (eg. high gangue minerals and deleterious minor elements such as phosphorus) must look to a discounted price relative to the base price fixed by the major price setters each year. Conversely, those suppliers with high quality ores can be more aggressive in price setting and demand at least the base price and in some cases even a higher than base price.

Market for Marra Mamba ore

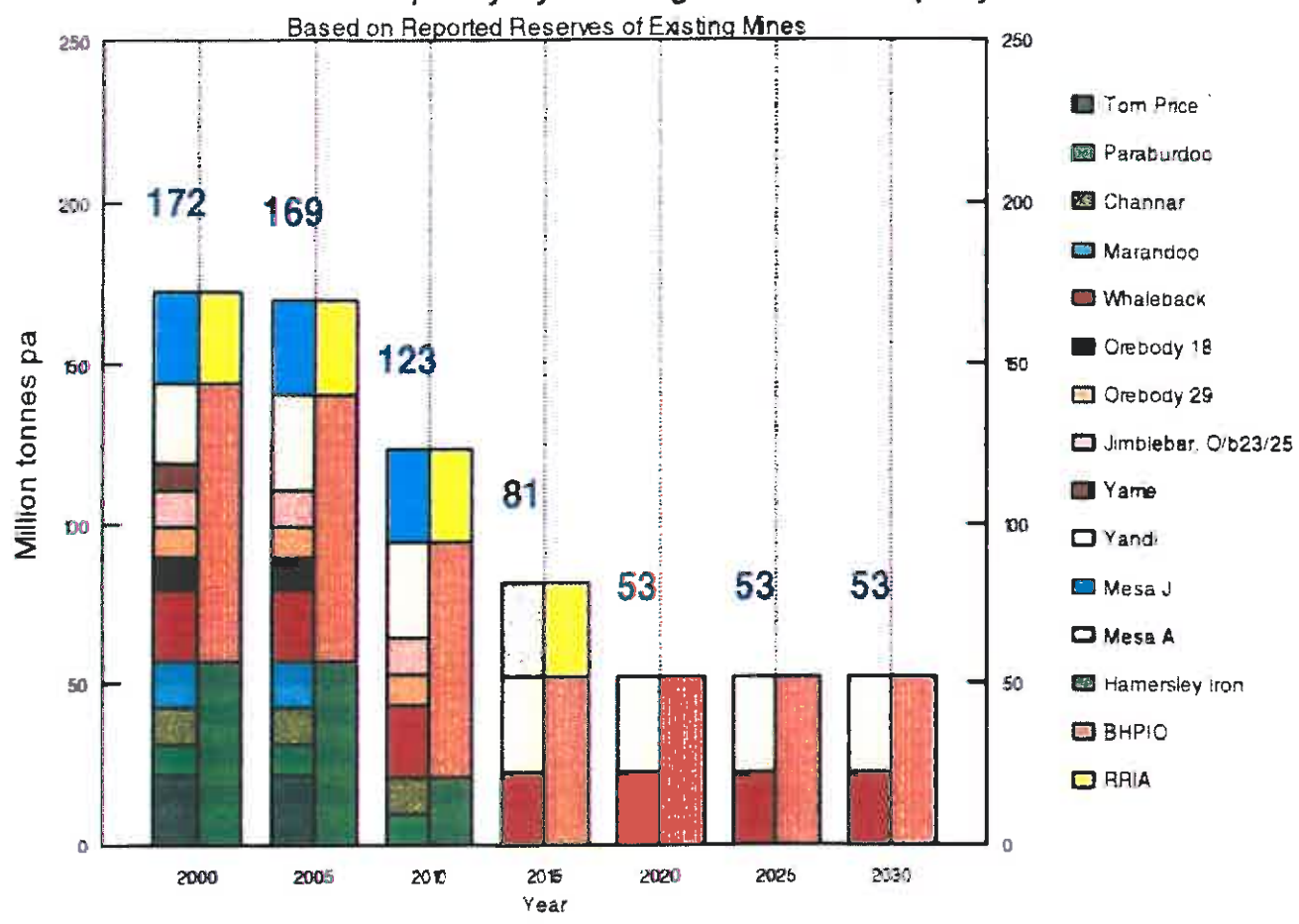
- 6.1.5 It is anticipated there will be a decline in production from the mines in the western Pilbara by 2010 and that by 2020 the premium Brockman ore reserves in this region will be substantially exhausted.

There has been a significant increase in exploration activity in the past three years and during this time virtually all of the prospective mining tenements within the Hamersley Iron Province have been taken up by either RRIA, BHPIO, Hamersley Iron or Hancock Prospecting.

The figures below detail the current Pilbara iron ore mines total capacity and estimated life. By 2010 the capacity will decline by 49 Mtpa to 123 Mtpa, which is almost 30 Mtpa less than total Western Australia exports of 152Mt during calender 1997.

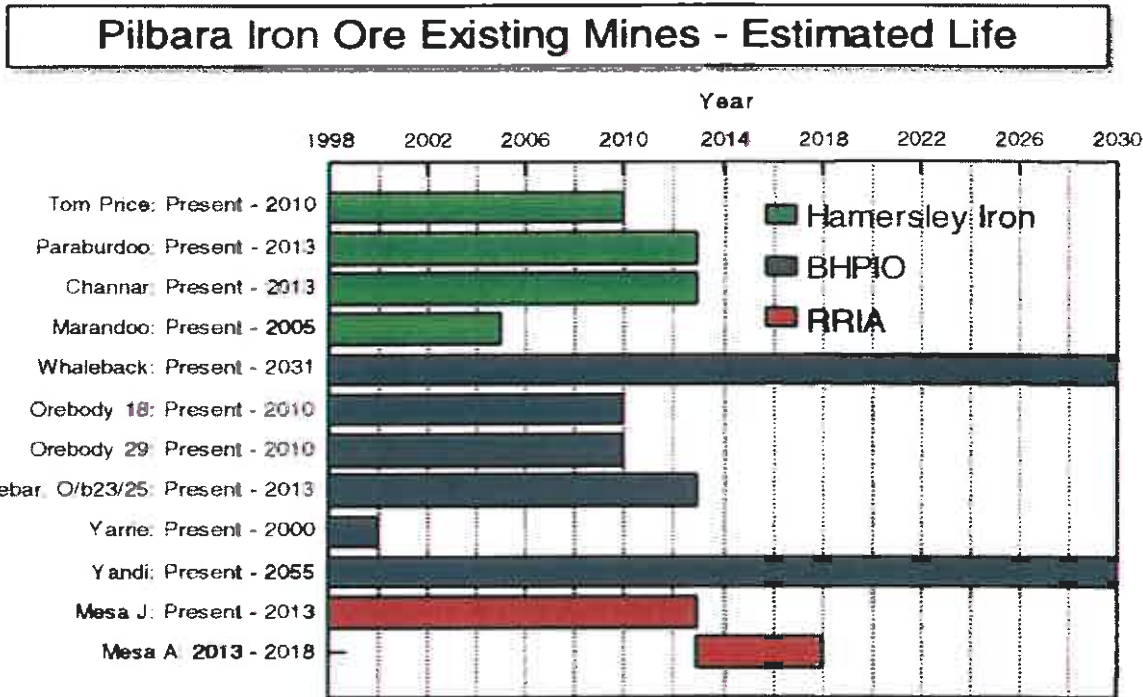
Figure 1.1:

Pilbara Iron Ore Capacity by Existing Mines & Company



Source: compiled from published company and research reports

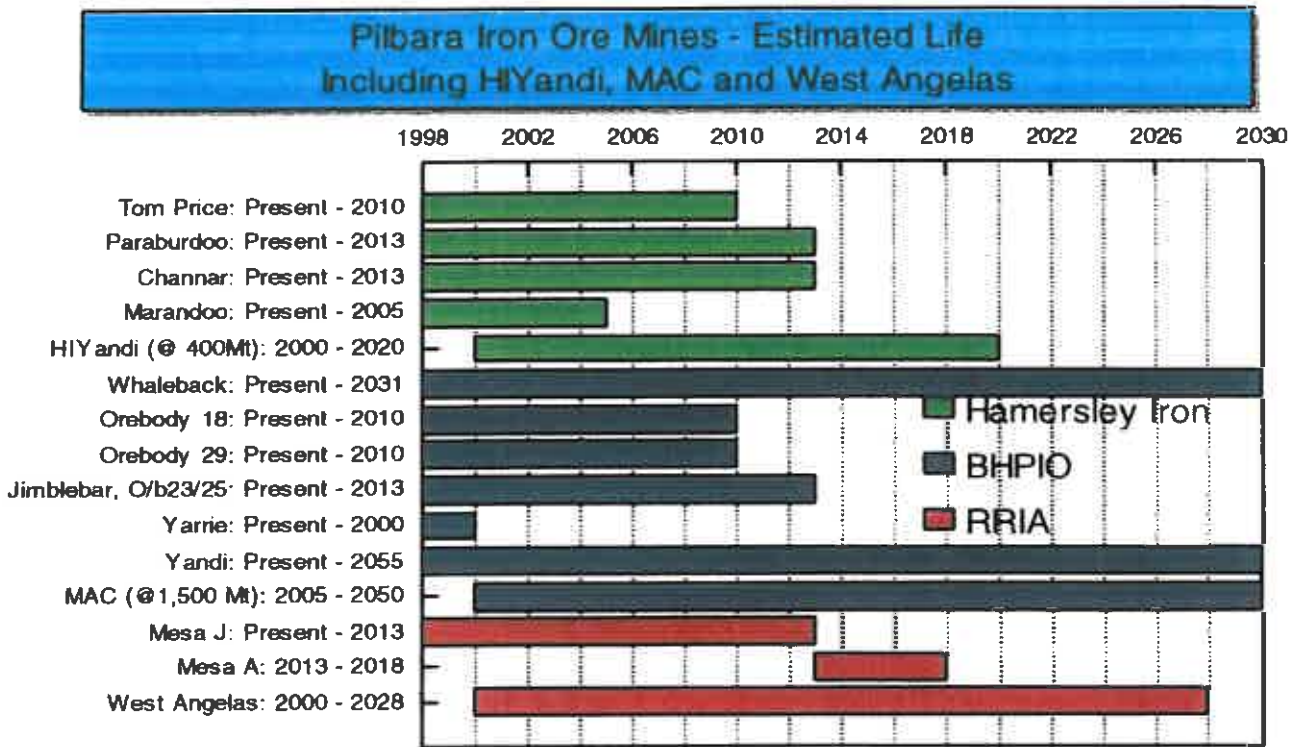
Figure 1.2:



Source: compiled from published company and research reports

The figures presented above demonstrate that even based on current demand of iron ore there will be a requirement for the development of new deposits in the Pilbara.

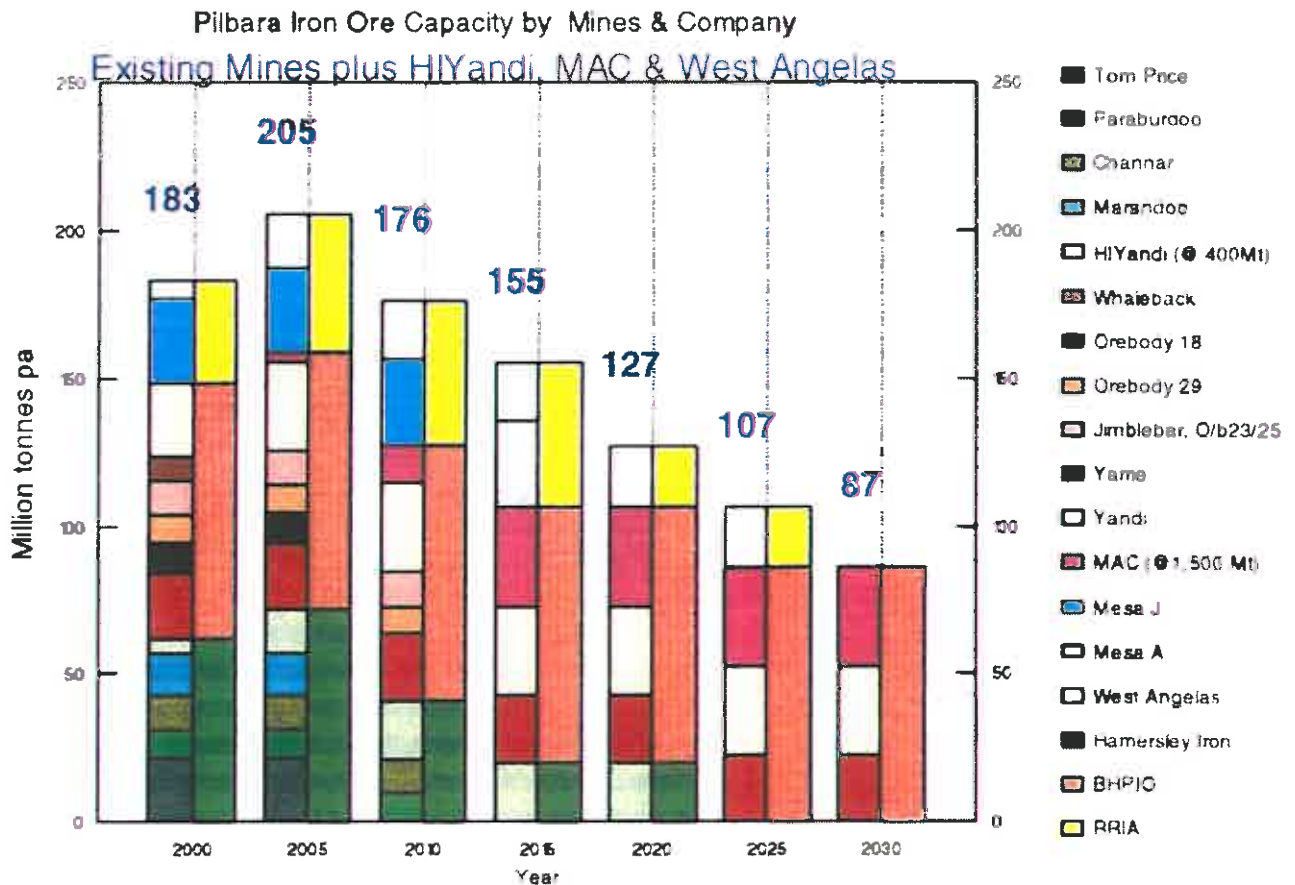
Figure 1.3:



Source: compiled from published company and research reports

Figures 1.3 above and 1.4 below demonstrate that, even with these new developments, by 2015 the production capacity of the Pilbara will be less than current levels. By 2030 BHPIO will be the only iron ore producer in the Pilbara unless other deposits are developed in addition to HI Yandi, MAC and West Angelas.

Figure 1.4:



Source: compiled from published company and research reports

There are other substantial deposits held by BHPIO, HI and HPPL, however the assessments of the development potential of these deposits are not as advanced as for HI Yandi, MAC, Hope Downs and West Angelas.

Despite the increase in exploration activity there has been no evidence of any significant new low phosphorus Brockman iron ore discoveries. With the exception of medium size Marra Mamba deposits such as Hope Downs there have been no major discoveries of low phosphorus bedded ore anywhere in the Pilbara for 20 years. If new orebodies were discovered, development of such ore reserves is dependent upon the market demand for such reserves. Even if the market demand was apparent, there is a considerable time lag in the physical development of bringing ore reserves into production.

Increasing Asian steel mill consumption, increasing shipping costs, greatly reduced reserves of Brockman ore and increasing sensitivities to alumina and phosphorous levels have led major customers to the conclusion that further development of Marra Mamba deposits is essential in the short term to ensure adequate iron ore supplies to the world steel industry in the 21st century.

essential in the short term to ensure adequate iron ore supplies to the world steel industry in the 21st century.

Within 20 years, Marra Mamba deposits will replace depleting Brockman ores and meet growing new demands to supply a significant percentage of the total market (30 Mt or more). Even under pessimistic demand scenarios, there is a clear case for a 20 Mt Marra Mamba based project within the next 10 years.

Development of Marra Mamba iron ore deposits is also likely to be the main factor capable of limiting the expected decline in competition resulting from a limited number of competitors and depleting resources of Brockman ore.

Iron ore development, of any ore type, will not take place if the iron ore cannot be transported cost effectively and safely to port facilities, as otherwise, the markets for ore, no matter how big or diverse, cannot be reached. Access to rail facilities such as the Hamersley Rail Infrastructure Facility will ensure that the development of Marra Mamba ore deposits, can occur.

The quality of Marra Mamba lump and fines, considering chemistry, structure, sintering characteristics, and blast furnace metallurgical behaviour, is considered inferior to Brockman and some other merchant iron ores. As such, in the past if Marra Mamba is sold as a single ore (100% - no mixing with other ores), the price is discounted from quality hematite ores; i.e. Brockman ores.

RRIA intends to introduce 100% Marra Mamba lump and fines to the market place. Because of the higher loss on ignition of Marra Mamba ore to hematite mentioned above, a price discount, yet to be determined, will probably apply. However, RRIA is prepared to negotiate a price for its Marra Mamba ores, based on quality compared to a hematite lump and fines.

Once a precedent has been set on price of 100% Marra Mamba lump and fines, other deposits will be developed by holders of Marra Mamba iron resources in Western Australia and sold on the world market.

The introduction of 100% Marra Mamba lump and fines to merchant sales in the international and national market place will enhance the competitive nature of iron ore trade.

Competition in iron ore product markets

- 6.1.6 An increased level of development, and an increased product range arising from development of Marra Mamba ore in particular, will lead directly to increased competition in iron ore export markets.

The Australian iron ore industry has exported over 2 billion tonnes of high grade iron ore for blast furnace use since operations began in the mid 1960's. The majority of iron ore produced from the Pilbara region is exported, as there is no significant domestic market for these products.

As world markets for iron ore, particularly those in Asia, seek finer grade iron ore products and have increased desire for iron ore products such as Hot Briquetted Iron (HBI) or Direct Reduction Iron (DRI), and have less interest in the traditional Electric Arc Furnace (EAF) products, there is considerable opportunity in these markets for the entry of Marra Mamba ore and products. The development of Marra Mamba ore and products will help to meet the growing demand for high grade iron ore products, and may in fact displace the traditional ore types. As a result, the development of Marra Mamba ore, which relies directly on rail transportation in order to reach these markets, will have a direct effect on competition in the export markets for iron ore.

As can be seen from Figure 1.5 below, the share of crude steel from integrated mills is forecast to fall to 63% in 2000 and 60% by 2005 with only a few Asian countries (including China) expected to develop new integrated steel capacity. New EAF technology will be mostly located in the developing regions of Asia and Latin America as illustrated in Figure 1.6 below.

For iron ore supply to the blast furnace industry to meet expected demands over the forecast period there is a need for development of some 70 Mtpa of additional iron ore export capacity and 40 Mtpa of replacement capacity over the next 10 years.

Figure 1.5:

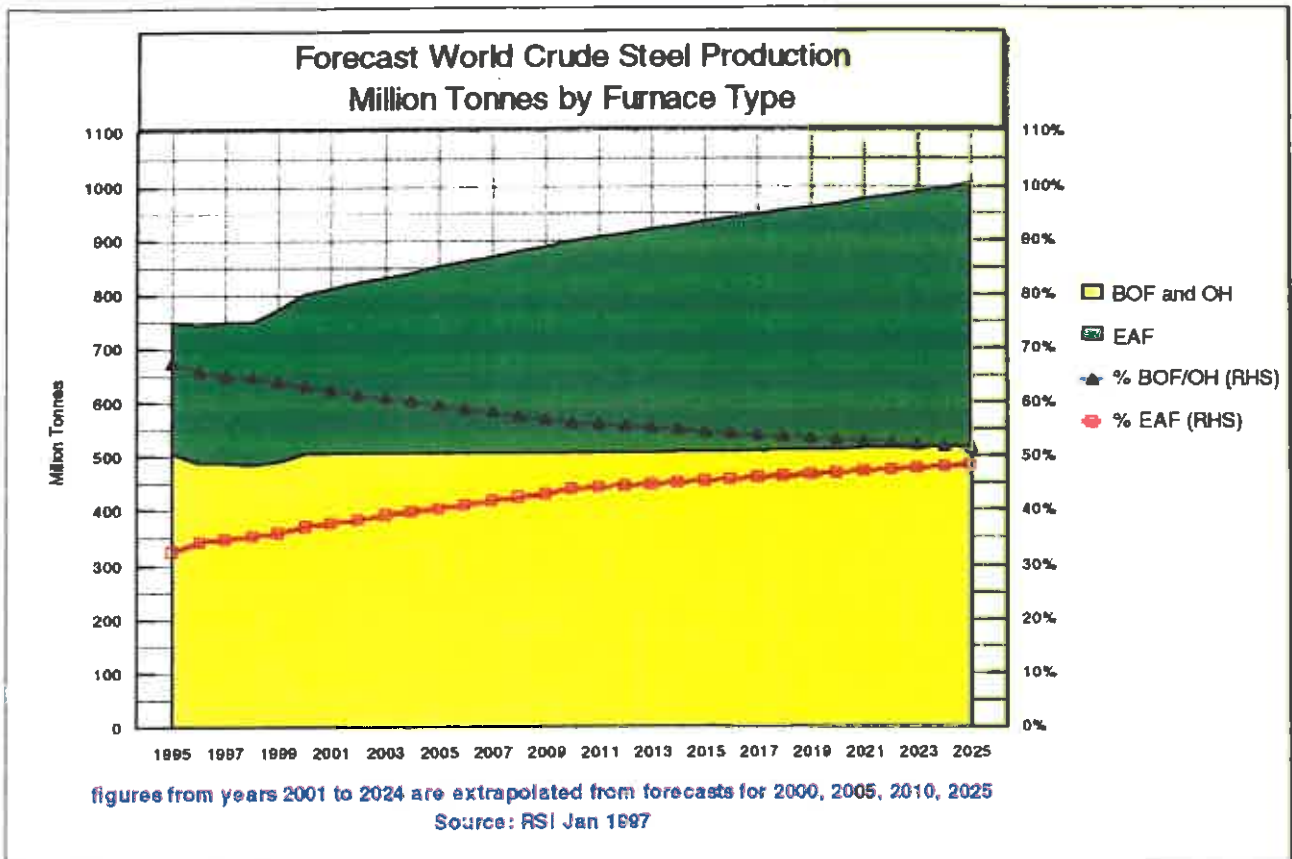


Figure 1.6: Forecast Steel Production by Region

Million Tonnes		1995	1996	1997	1998	1999	2000	2005	2010	2025
W Europe including: European Union (15) & Non EU Europe	BOF and OH	106	99	97	94	96	98	94	85	77
	EAF Steel	65	62	63	63	66	69	80	87	96
	Total (EAF+BOF+OH)	171	161	160	157	162	167	174	172	173
Eastern Europe / CIS	BOF and OH	97	90	91	92	93	96	100	105	109
	EAF Steel	16	16	17	17	18	20	23	27	32
	Total (EAF+BOF+OH)	113	107	108	109	111	116	123	132	141
North America	BOF and OH	70	68	66	63	64	67	63	61	52
	EAF Steel	51	55	56	56	60	63	67	70	78
	Total (EAF+BOF+OH)	121	123	122	119	124	130	130	131	130
South America	BOF and OH	24	22	22	21	22	23	24	25	28
	EAF Steel	11	14	15	15	15	16	20	26	35
	Total (EAF+BOF+OH)	35	36	37	36	37	39	44	51	63
Japan	BOF and OH	69	67	67	65	65	65	57	52	50
	EAF Steel	33	32	33	33	34	35	37	38	38
	Total (EAF+BOF+OH)	102	99	100	98	99	100	94	90	88
India	BOF and OH	14	15	15	15	16	16	18	20	26
	EAF Steel	6	6	7	8	10	12	17	23	37
	Total (EAF+BOF+OH)	20	21	22	23	26	28	35	43	63
China	BOF and OH	73	76	78	80	82	84	89	94	110
	EAF Steel	20	21	22	22	23	24	27	31	39
	Total (EAF+BOF+OH)	93	97	100	102	105	108	116	125	149
Korea & Taiwan	BOF and OH	30	31	31	32	33	35	38	41	44
	EAF Steel	19	21	22	23	24	25	30	35	40
	Total (EAF+BOF+OH)	49	52	53	55	57	60	68	76	84
South East Asia	BOF and OH	5	5	5	5	5	5	5	5	5
	EAF Steel	11	12	13	13	14	15	21	28	40
	Total (EAF+BOF+OH)	16	17	18	18	19	21	26	33	46
Total Crude Steel for Other Regions	BOF and OH	18	17	17	17	17	17	17	17	17
	EAF Steel	13	14	15	15	17	18	23	27	50
	Total (EAF+BOF+OH)	31	31	32	32	34	35	40	44	67
consisting of:	Australia / NZ	9	9	9	9	9	9	10	11	11
	Africa	14	13	14	14	14	15	16	18	27
	Middle East	8	9	9	10	10	11	13	15	28
World Total	BOF and OH	506	490	489	485	493	505	507	505	518
	EAF Steel	245	254	262	265	279	297	344	393	485
	Total (EAF+BOF+OH)	751	744	751	750	772	802	851	898	1003

Source: Research Systems International January 1997

Competition in Iron Ores

6.1.7 In 1972 RRIA introduced low grade pisolite ore into the market place (domestic and international). RRIA remained the sole trader of this low grade ore until 1992 when BHPIO introduced a superior pisolite ore (Yandi) which was low in alumina; 1.2% compared to RRIA alumina at 2.6%.

RRIA pisolite is now being replaced in some markets by BHPIO Yandi ore and when HI Yandi comes on stream in 1999 there will be further competition for sales of pisolite ores.

In order for Robe to improve its competitiveness it is necessary for Robe to produce a high grade sinter fine product which is acceptable to modern blast furnace technology and current blast furnace practice.

In the past, RRIA has attempted to beneficiate RRIA pisolite ore but so far the nature of the mineralogical make-up of the iron bearing minerals prohibits beneficiation. Test work on beneficiation continues.

Therefore, in order for RRIA to improve its competitiveness in the supply of iron ore to iron and steel making centres, a new supply source, and a new iron ore product (low alumina) must be developed.

This product can be sourced from RRIA's West Angelas Marra Mamba Iron Formation. Alumina content, most critical to reducing slag in the blast furnace, is less than 2.0% in the West Angelas deposits.

Table 1.1 below outlines the Australian sinter fines prices and their respective chemical properties.

Table 1.1 Australian Sinter Fines Prices

Mine	Owner	Price *	Fe	SiO ₂	Al ₂ O ₃	P
		%	%	%	%	%
Mt Newman	BHP	100	63.6	4.50	2.43	0.065
Hamersley	HI	100	62.95	3.84	2.25	0.071
Yandi	BHP	94	58.75	4.88	1.26	0.040
Mesa J	RRIA	82	57.45	5.14	2.60	0.043
West Angelas	RRIA	**	61.77	3.01	1.92	0.072

* percentage of the Australian hematite price
 ** Yet to be determined

Source: Iron Ore Manual 1997-98

If the West Angelas deposits are developed, then RRIA will be in an improved position to market a product in competition with those suppliers with ores more suitable to modern blast furnace technology [natural low alumina ores (BHPIO Yandi and HI Yandi) or ores which can be beneficiated (Paraburdoo/Channar)].

Iron Ore Products

6.1.8 RRIA pisolite ores do not lend themselves to production of large quantities of quality lump products. As such, RRIA has remained predominantly a one product producer, sinter fines only, since the Robe River Project commenced in 1972. (From 1972 through 1980 RRIA also produced pellets from pisolite ores but in today's market the quality of the RRIA pellet is unacceptable - alumina is too high.) This is a disadvantage to RRIA.

The development of West Angelas will enable RRIA to broaden its product range and enable it to more effectively compete in world markets for iron ore.

BHPIO and Hamersley both produce and sell lump and sinter fine ore exploited from the Brockman Iron Formation. In addition, high quality pisolite is also mined and shipped by BHPIO and Hamersley will be doing the same in 1999.

The West Angelas Marra Mamba Iron Formation deposits are of a quality to produce high grade lump and fine ores. Development of the West Angelas will enable RRIA to have a product mix similar to the other suppliers and enhance its competitiveness in the market place.

Rail Transport - A High Proportion of Cash Costs in the Iron Ore product market.

6.1.9 The transportation of iron ore from the mine site to the port constitutes a considerable proportion of the total costs of iron ore on an FOB basis. Of the firms which compete in the market for iron ore, inland rail transport constitutes between 20%-60% of the total cash costs on an FOB basis. The world average inland rail transportation cost, on an average mine basis is 26.5%, (Australia 32% and Brazil 50%) of the total cash cost of producing iron ore on an FOB basis.⁹ Access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility (which is the key structural market in delivering lower transport costs) will have a large impact upon the ability of iron ore producers in the Central Pilbara to compete on world markets.

⁹ AME Mineral Economics Iron Ore 1997 Mine Costs Vol 1 and 2.

Rail Haulage Market in Central Pilbara

6.1.10 The rail haulage market's structural elements or characteristics are such that access to the Rail Track Service would promote competition in the market.

The market for rail haulage in the Central Pilbara (and other areas in general) is characterised by relative ease of entry and exit, with comparatively low capital costs. The initial investment/ requirements to enter this market are access to locomotives and rollingstock and adequately trained personnel. Locomotives and rolling stock can be either bought new, second hand or leased. They are readily saleable into a secondary market and thus constitute a low risk sunk cost. The market for rail haulage has characteristics which would deem it highly contestable given the low sunk costs and the relative ease of entry and exit.

Given access to the rail track network a potential entrant in the haulage market would be able to effectively compete with the incumbent due to the structural nature of the market. Iron ore mines (both existing and potential) would have an increased choice in terms of quality of service and the price of iron ore haulage in the Central Pilbara.

Submission

6.1.11 RRIA's access to the Rail Track Service will promote competition in at least two principal markets:

- the iron ore product market; and
- the market for rail haulage services in the Central Pilbara.

Given the large proportion of total cash cost of iron ore (FOB) constituted by rail transport, the unlocking of the Rail Track Service provided by the Hamersley Rail Infrastructure Facility will have significant impact upon the ability of Central Pilbara producers (and potential producers) to effectively compete in the market for iron ore.

The iron ore market is fiercely competitive with over 60 mines in the world actively competing on price, quality and service. The development of the West Angelas iron ore deposit (which is facilitated by access to the Rail Track Service) will allow RRIA to more effectively compete in iron ore product markets through the development of a Marra Mamba deposit which will enable it to offer a broader product and quality range.

As in previous NCC submissions¹⁰ and decisions regarding rail track it is accepted that the provision of access to the rail track services will promote competition in the rail haulage market. Accordingly, access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility will enable competitors to offer alternative rail haulage services to those of Hamersley.

6.2 Uneconomical to duplicate

6.2.1 Section 44G(2)(b) of the TPA requires the NCC to be satisfied that:

"it would be uneconomical for anyone to develop another facility to provide the service;"

6.2.2 The estimated cost of duplicating the Hamersley Rail Infrastructure Facility is between \$1M and \$1.5M per line kilometre and could be more depending upon the number of sidings required. Independent engineering opinions of the upfront capital cost of a duplicate rail track facility range from \$400-\$430 million. Evidence has been put to NCC in other cases regarding the cost of installing railway infrastructure.¹¹

6.2.3 As HI already uses the Hamersley Rail Infrastructure Facility, which has sufficient spare capacity to fulfil all of HI's future rail requirements HI effectively is not a potential user of a duplicated line.

Rail Track Market

6.2.4 The essential structural characteristics of the Rail Track Service provided by the Hamersley Rail Infrastructure Facility market are such that it is uneconomic to duplicate the facility. Previous NCC decisions (Broken Hill Rail Services, Hunter Valley Rail Services, Brisbane to Cairns Rail Freight Services) and analysis have concluded that the facilities providing the rail track services are uneconomic to duplicate due to structural characteristics.

The market for rail track services in the Central Pilbara share the characteristics of rail tracks in general. Rail tracks are characterised by extremely high initial entry costs due to the high fixed capital cost component (\$400M-\$430M in this case). This initial entry cost is sunk as the rails themselves and the engineering and construction expenditure is location specific. The rail track market has a high minimum efficient scale, primarily due to the lumpiness of the initial

¹⁰ Refer NSW Minerals Council's Application for declaration of Hunter Valley Rail Service.

¹¹ In the Carpentaria application for declaration of the QR rail service between Brisbane and Cairns, the NCC considered submissions from Carpentaria that rail track cost was \$1M per line kilometre, and from National Rail as being \$1.5M per line kilometre when signalling, bridges and tunnels were included (pages 36, 39 of NCC Reasons for Decision).

investment. The same rail track which services 1Mtpa of iron ore can handle loads in excess of 80Mtpa. Operating costs for the rail track, once established, are low. Thus the rail track service has the basic natural monopoly trait of having falling unit costs as output increases.

It can be demonstrated that the market for rail track services in the Central Pilbara has the essential characteristics of a natural monopoly which would prohibit entry by any potential entrant. There are several tests for natural monopoly, which depend upon the structural characteristics of the market (as described above) and the demand conditions for the service.

The Hamersley Rail Infrastructure Facility has significant excess capacity (see the GHD Study attached in Annexure 8). It is estimated that the current rail track configuration can handle in excess of 80Mtpa of iron ore haulage. The current usage of the system is estimated at 62Mtpa. Even if the current rail configuration capacity is utilised, the incumbent has a comparably low cost of incremental capacity expansion.

The barriers to entry of the rail track market in the central Pilbara are such that it is uneconomic for a potential entrant to enter. For a potential entrant to compete with the existing Hamersley Rail Infrastructure Facility it would have to take the entire market demand away from the incumbent. Due to strong economies of scale the incumbent has falling average costs as capacity increases. Thus the potential entrant would have to match the capacity in order to reap the same scale economies. Given that the incumbent has an effectively sunk, heavily written down asset, the high capital costs of new entry would entrench the average cost advantage enjoyed by the incumbent and prohibit entry.

Even if the situation arose where the existing rail track facility was at capacity the incumbent has a significantly lower incremental cost of capacity expansion than does the new entrant establishing a new rail track.

Even though there are a number of potential iron ore projects which are actively looking at all rail transportation options, the more than \$400M upfront capital entry cost and the dominant position of the incumbent mean that it is not feasible to duplicate the facility on a standalone basis.

Duplication of Part of Rail Track Service

6.2.10 Section 44F(4) of the TPA requires the NCC to consider:

"whether it would be economical for anyone to develop another facility that could provide part of the service"

but this subsection does not limit the grounds on which the NCC may decide to recommend that the service be declared or not be declared.

Factors that would make it uneconomical for any one to develop another facility that could provide part of the Rail Track Service would be:

- the remoteness of the areas to be traversed by such a facility;
- the lack of industrial or other economic development in the region through which such a facility would traverse;
- the impracticability of providing only a partial rail transportation service between East Pilbara minesites and ports for exporting products from those mines; and
- the absence of any market for such a service.

Submission

Because of the foregoing, it is submitted that it is not economically possible to duplicate in whole or in part the facility providing the Rail Track Service.

6.3 National Significance

6.3.1 Section 44G(2)(c) of the TPA requires the NCC to be satisfied that:

"the facility is of national significance, having regard to:

- (i) the size of the facility; or*
- (ii) the importance of the facility to constitutional trade or commerce; or*
- (iii) the importance of the facility to the national economy."*

6.3.2 The Hamersley Rail Infrastructure Facility is of national significance due to its size, its importance to trade and commerce between Australia and iron ore importing countries such as Japan, Korea, China, Taiwan, India and Europe, and its importance to the Australian economy.

Size of the Facility

6.3.3 The Hamersley Rail Infrastructure Facility is one of the longest, private rail lines in the Pilbara region of Western Australia. It is centrally located to future iron ore developments. It represents a major component of Western Australia's and Australia's private rail infrastructure. It currently has an annual tonnage of 62Mt transported over it. If the Rail Track Service is declared, these tonnages will increase substantially.

Trade and Commerce Effects

6.3.4 In addition to its size, the Hamersley Rail Infrastructure Facility is of national significance as access to it will greatly assist iron ore development in the Pilbara region, and the development and growth of the Pilbara region itself. A particular example of this, is the role that access to the Hamersley Rail Infrastructure Facility will play in the economically viable development of the West Angelas and other potential iron ore deposits. Pilbara iron ore development resulting from the development of these deposits, and the development of the Pilbara region itself will have significant benefits to the national economy.

Pilbara Region

6.3.5 Prior to the 1960's the Pilbara region of Australia had negligible infrastructure and a population of less than 5,000 people spread over the 510,000 square kilometre region. Due largely to resource development, the population of the region is now in excess of 50,000 and the region is home to some of the world's largest and most efficient mining, railway and port operations. The region also produces 91% of the iron ore exported from Australia¹². National income figures from the 1991 Australian Population census indicate that average household income for Pilbara residents was 130% of the national mean.

¹² In 1996/97 the Pilbara iron ore producers exported some 137 Mt of iron ore with a value of in excess of \$3 billion, approximately 5% of Australian's total merchandise exports for 1996/97. The Australian Bureau of Agricultural & Resource Economics (ABARE) 1998 March Quarter Report forecasts that iron ore exports will reach 149 Mt in 1998/99 and have an export value of just over \$3 billion, which means that export earnings for the iron ore industry will be 2.5 times that of the Australian steel industry.

Pilbara Iron Ore Development

- 6.3.6 Development within the Pilbara iron ore industry is ongoing. Projects currently under construction include BHPIO's \$2.1 billion HBI plant and Hamersley Iron's \$700 million development of the Yandicoogina mine and associated infrastructure. Other development expenditures will be required to maintain and increase current export levels as existing deposits are depleted.

The iron ore industry is the Pilbara's largest private employer. Service support industries to iron ore mining are a major indirect source of employment for the region's population. Future and ongoing investments in iron ore development will underpin the economic viability of the Pilbara region and its population.

- 6.3.7 The estimated export value of increased iron ore development in the Pilbara region provided by the West Angelas development is in excess of \$450M per year.

National Economy Benefits

- 6.3.8 The mining of the iron ore deposits at West Angelas will result in substantial national and state benefits, including:
- investment in excess of \$500 million capital (excluding railway costs), most of which will be directed into the Western Australian economy;
 - increased export value of Western Australian iron ore product to international customers;
 - direct employment in the eastern Pilbara of between 600 and 800 people during construction and between 300 and 400 during operation;
 - annual direct employment wages of \$20M to \$25M;
 - approximately \$30M per year of state royalties;
 - increased demand for goods and services creating business and employment opportunities; and
 - potential for development of downstream processing.

In addition to the direct benefits arising from the development of West Angelas, there are flow-on benefits to the non-mining sector. The multiplying factors of mining for the rest of the economy have been estimated¹³ as:

- any increase in output of mining results in a two fold increase in the output of non-mining industry;
- a \$1 million increase in mining wages and benefits results in a \$2 million increase in the non-mining sector; and
- for every 100 additional jobs in the mining industry approximately 300 non-mining jobs are created. This implies that total ongoing employment from the West Angelas project will be between 1200 to 1600 people earning a total of \$95M to \$150M in wages per year for 25 to 30 years.

The West Angelas project itself will provide both direct and indirect employment opportunities for people in the Pilbara, as well as a substantial investment in infrastructure.

The Pilbara Region's economy and its future growth and development are largely dependent on the continued viability of resource development projects.

The West Angelas project will, when operating at its design capacity, generate more than \$500M/year in export income.

PAYE taxation on the above-mentioned wages of \$120M to \$150M per year will be an additional \$25M to \$40M/year, plus company taxes that will be generated directly to the Commonwealth.

A summary of the financial contributions made by RRIA to the Federal and State Government, in terms of both export earnings and applicable taxes, since 1972 is attached in Annexure 9. As at the end of 1997, the aggregate of this contribution was just under one billion dollars.

Development of Marra Mamba ore types will be crucial for advancement of the iron ore industry in Australia, as the premium quality low phosphorous ore deposits of the Brockman Formation are gradually being depleted.

¹³ Clements, Ahammad & Ye Qiang: Multiplier Effects of the Western Australian Mining and Mineral Processing Industries, August 1995, Economic Research Centre, University of Western Australia.

Further detail as to the national and State benefits arising from the West Angelas development are set out in section 2.1.1 of the Environmental Review and Management Programme for West Angelas, attached in Annexure 3.

Submission

6.3.9 Accordingly, the Hamersley Rail Infrastructure Facility is of national significance because:

- of the location of it within the Pilbara region, central to the iron ore deposits within this region, an area of considerable economic activity;
- of the monetary value of trade which is dependent on the services associated with it;
- the Pilbara iron ore industry provides substantial annual sales revenues to businesses in it, which has consequential direct and indirect benefits to the West Australian and national economies; and
- providing access to the Hamersley Rail Infrastructure Facility will promote competition in the iron ore products markets based on Marra Mamba ore types.

6.4 No undue risk to human health and safety

6.4.1 Section 44G(2)(d) of the TPA requires the NCC to be satisfied that:

"access to the service can be provided without undue risk to human health and safety;"

Regulation 6A of the Trade Practices Regulations requires an application to include:

"a description of one or more of the methods by which access to the service can be provided and details of any risk to human health or safety caused by that method"

- 6.4.2 The Hamersley Rail Infrastructure Facility has presently significantly under-utilised operating capacity, as demonstrated by the GHD Study, attached in Annexure 8. That study shows that the existing Hamersley Iron tonnages plus the HI Yandicoogina tonnages plus the RRIA West Angelas tonnages can be safely transported over the Hamersley Rail Infrastructure Facility. As a result RRIA access to the Hamersley Rail Infrastructure Facility will not create any undue risk to human health and safety.
- 6.4.3 The fact that access to the Hamersley Rail Infrastructure Facility can occur safely is further reinforced by the safety measures used by both HI and RRIA, the proposed method of RRIA access, as set out in part 7 of this application, and the exceptional prior record of rail safety in the Pilbara region.

Rail Safety in the Pilbara

- 6.4.4 Safety has continually improved with all three Pilbara private rail operations over the last decade with the installation and upgrading of trackside equipment and monitoring systems (noted above). As a result, RRIA's safety record includes:
- no mainline derailments as a result of broken rails since the installation of Broken Rail Detection System in 1992;
 - no mainline derailments as a result of bearing failures since the installation of Hot Box Detection system in 1994; and
 - although a collision occurred in 1996 between 2 locomotives and a stationary empty train causing damage to 4 locomotives it was a direct result of an operator error. Cause of this incident resulted in termination of the train driver's contract.

HI has a similarly proven rail safety record.

Safety Measures used by HI and RRIA

- 6.4.5 Procedures used by RRIA and HI for the minimisation of derailments include the use of:
- broken rail detection;
 - hot box detection;
 - dragging equipment detection; and
 - wheel impact detectors.

These methods have a proven record of preventing the majority of potential causes of rail accidents, and are accepted safety mechanisms within the Australian rail industry. The equipment and procedures used by both RRIA and HI are entirely compatible. The only differences in equipment standards or operating procedures, concern axle loading, radio frequencies, CTC, In-cab signalling and minor differences in wheel and rail profiles. As a result, there is nothing to prevent RRIA locomotives and rolling stock from operating safely on the Hamersley Rail Infrastructure Facility.

In addition, all RRIA rail crews will be trained and accredited to operate under both the HI and RRIA rail systems, and standards for this accreditation will be agreed between RRIA and HI.

Agreement will also be reached as to detailed procedures and arrangements to be followed in the event of equipment failure, and for access by RRIA personnel and hi-rails for the purposes of crew relief or any maintenance.

Method of RRIA Access

- 6.4.6 The method by which RRIA proposes to access the Rail Track Service is set out in part 7 of this application, which details the measures which will be used to ensure that HI's existing trains will be subject to a minimum of disruption and safety will be maintained at all times.

As part of negotiated access between HI and RRIA, it is proposed that a Safety Operations Manual will be developed and implemented in relation to RRIA's access to the Hamersley Rail Infrastructure Facility. This Manual will ensure that health and safety matters relating to the Hamersley Rail Infrastructure Facility and the Rail Track Service are maintained if RRIA access proceeds.

Submission

- 6.4.7 Access by RRIA to the Service provided by the Hamersley Rail Infrastructure Facility is technically and practically feasible, due to the current capacity of the Hamersley Rail Infrastructure Facility, and its current method of usage. Existing HI safety mechanisms and procedures, as well as additional mechanisms or procedures to be introduced if RRIA access takes place, will ensure human health and safety is protected to the degree required within the rail industry.

6.5 No existing effective access regime

6.5.1 Section 44G(2)(e) of the Trade Practices Act requires the NCC to be satisfied that:

"access to the service is not already the subject of an effective access regime;"

6.5.2 No existing access regime in relation to the Hamersley Rail Infrastructure Facility, or rail track service or lines generally, in either Western Australia or Australia is currently certified as "effective" under Part IIIA.

Statewide Access Regime

6.5.3 The Western Australian Government has expressed an intention to develop a State rail access regime for certification as "effective" under Part IIIA. However, no details as to the progress to date of this intended regime, or of the time frame for its introduction, are presently available. It is assumed that implementation, and certification (if it occurs) will not occur for some time.

In any case, the existence of an effective access regime must be considered at the time of the assessment of this application, not at a later date.

National Access Regime

6.5.4 The Commonwealth Government has more advanced plans for the implementation of a national access regime for interstate rail lines. However, this regime will not include or apply to the Hamersley Rail Infrastructure Facility, as it is entirely intrastate.

Hamersley State Agreement Act

6.5.5 Regulation 6A(k) of the Trade Practices Regulations requires an application to the NCC for a declaration recommendation to include:

"if the service is already the subject of a regime for access to the service (including an access undertaking):

- (i) *particulars of the regime including details, if any, about when the regime is to end; and*
- (ii) *reasons why the regime is not an effective access regime"*

There is no access regime applicable to the Rail Track Service. There is a limited access regime available in the haulage market under the Hamersley State Agreement. A copy of the Hamersley State Agreement Act is provided in Annexure 10.

Pursuant to the Hamersley State Agreement Act, Hamersley must, to the extent it can do so without unduly prejudicing or interfering with its own operations, carry the freight of third parties on the Hamersley Rail Infrastructure Facility¹⁴:

- subject to any applicable by-laws¹⁵ made under the Hamersley State Agreement Act (which will include provision for reasonable charges and may include terms and conditions as to user, charging and limitation of liability of Hamersley); and
- in the absence of by-laws, upon reasonable terms and at reasonable charges (having regard to the cost of the railway to Hamersley).

6.5.6 This limited access regime is not currently certified as effective, and no steps have been taken by the Western Australian Government to have it certified as effective. In addition, this access regime for haulage services appears not to satisfy the criteria required for an access regime to be certified as effective.

6.5.7 Section 44G(3) of the TPA stipulates that the NCC, in deciding whether a State access regime is an effective access regime:

"(a) must apply the principles of the Competition Principles Agreement; and

(b) must not consider any other matters."

Clauses 6(2) to 6(4) of the Competition Principles Agreement (CPA) which contain the principles of the CPA relevant to effective access regimes are not satisfied by the Hamersley Agreement Act due to the absence of an enforceable right to negotiate procedure for third parties seeking access, and the absence of any form of enforceable dispute resolution process.

¹⁴ Clause 10(2)(a) of the Hamersley State Agreement, a copy of which is attached as Annexure 101 of this application

¹⁵ No such by-laws have been made to date. Hamersley may also, with prior approval of the Minister, enter into an agreement with a third party for the joint user of the Hamersley Line.

Right to Negotiate

- 6.5.8 An implied right to negotiate access to rail haulage services, as required by clause 6(3)(b) of the CPA, is contained in clause 10(2)(a) of the Hamersley State Agreement Act which requires that the terms and conditions of access must be reasonable, and in determining this, the cost of the railway, industry experience with other negotiated access regimes, the costs of capital, opportunity costs, transport costs, operating and maintenance costs, plus a reasonable return upon Hamersley's overall investment, can all be taken into account.

Determination of "reasonable" terms

- 6.5.9 However, this so-called right to negotiate is not enforceable by a third party seeking access, as the Hamersley State Agreement is not a contract made with or for the benefit of that third party. It does not set out any mechanism to determine whether terms and charges are reasonable, other than that the Minister on behalf of the State, as a party to the Hamersley State Agreement could decide, on his own motion, or possibly on a request by the third party, to intervene as to what he believes is comprised by the expression "reasonable terms" and "reasonable charges" for access purposes.

Any dispute or difference between a third party seeking access and Hamersley will not automatically be subject to this Ministerial intervention. The Minister's decisions may also be put to arbitration by Hamersley under clause 25 of the Hamersley State Agreement, further weakening the third party's ability to enforce the right to negotiate. This right to arbitration will not apply to the third party seeking access.

A party seeking access has no right to cause the Minister's decision as to reasonableness to be reviewed or appealed.

Therefore, this limited regime provides no mechanism for enforcement by a third party of a right to negotiate access or for resolution of disagreement as to access terms and charges between that third party and Hamersley.

Dispute Resolution

- 6.5.10 The Hamersley State Agreement Act does not contain any dispute resolution process to which a third party seeking access can resort. If a third party is unable to reach an understanding with Hamersley as to the "reasonableness" of the terms and charges for access to Hamersley's line, it is only able to have the "reasonableness" of Hamersley's terms and charges tested indirectly by arbitration if the Minister intervenes.

As it is not a party to the Hamersley State Agreement, and hence does not have privity of contract, the third party cannot compel Hamersley to continue negotiations as to access terms and charges if Hamersley maintains that the terms are reasonable and the Minister does not intervene. The third party will not have any right to participate in the Minister's intervention and is therefore excluded from this arbitration process.

Use of Agreement Act access regimes to date

- 6.5.11 A previous request for access to the Hamersley Rail Infrastructure Facility by RRIA to Hamersley did not succeed due to an inability to agree upon the terms and conditions for access. These negotiations are described in part 8 of this application. This further illustrates that the provisions of the Hamersley Agreement Act are inadequate to properly and effectively regulate the parties' negotiations, or the resolution of an access disagreement. The limited access regime under the Hamersley State Agreement has not otherwise been used to date.
- 6.5.12 Other State Agreement Acts contain similar provisions to the Hamersley State Agreement. The only situation where access has been obtained by a third party to railways under an Agreement Act in Western Australia, is the use by the Goldsworthy Joint Venture Participants and the Yandicoogina Joint Venture Participants of the Newman-Port Hedland rail line for the transport, storage and shipment of iron ore from those joint venture's mines. However, as the overall beneficial ownership of these Joint Ventures is the same, with individual participants being merely different legal entities, this is not a commercially "arms length" situation, and so does not test or prove the sufficiency of the access regime under the Agreement Act.

BHP Minerals, with others, and the Mt Newman Iron Ore Company Limited attempted to use the limited access regime under the Iron Ore (Mount Newman) Agreement Act 1964 to negotiate access to the railway constructed pursuant to that Agreement Act.

However, access was never obtained as the State Government and BHP Minerals could not resolve the issue of access costs.

Submission

- 6.5.13 No existing certified "effective" access regime presently applies to Rail Track Service provided by the Hamersley Rail Infrastructure Facility, and none is expected to apply within the time frame for the development of the West Angelas deposit. The Hamersley Agreement Act, which relates to the rail haulage market, is not certified as effective

and appears not to conform to the requirements for an effective access regime under Part IIIA and the CPA. In addition, this limited regime has been proven not to operate as a workable access regime, consistent with the requirements of the CPA.

Finally, RRIA is not aware of any undertaking having been accepted by ACCC under Part IIIA of the TPA in relation to the service covered by this application.

6.6 Not Contrary to the Public Interest

6.6.1 Section 44G(2)(f) of the TPA requires the NCC to be satisfied that:

"access (or increased access) to the service would not be contrary to the public interest".

Clause 1(3) of the Competition Principles Agreement sets out some factors which may be relevant to the question of "public interest", including:

- ecologically sustainable development;
- social welfare and equity considerations, including the distributive consequences of industry reform strategies and the maintenance of community service obligations;
- policies concerning occupational health and safety, industrial relations, access to justice and other government services, and equity in the treatment of different persons;
- economic and regional development, including employment and investment growth;
- the interests of consumers or a class of consumers; and
- the competitiveness of Australian businesses.

The NCC has stated that these are not necessarily definitive in relation to applications under Part IIIA¹⁶. These factors are therefore only some of the factors relevant to whether access to the Rail Track Service would be contrary to the public interest.

6.6.2 It is submitted that declaration of the Rail Track Service will have considerable benefits in the public interest and access to the Rail Track Service will not have any effects or implications contrary to the public interest.

¹⁶ Footnote 36 of the NCC "Draft Guide to Part IIIA of the Trade Practices Act" states: "clause (1(3)) does not define public interest for the purposes of Part IIIA of the *Trade Practices Act*."

Increased Competition

- 6.6.3 There is considerable "public interest" arising from the increased competition in the relevant markets, as set out in part 6.1 of this application, which will be a result of declaration of the Rail Track Service provided by the Hamersley Rail Infrastructure Facility.

Trade Practices Act Objectives

- 6.6.4 The objectives of the Trade Practices Act, including Part IIIA, as set out in section 2 of the Act, include enhancement of the welfare of Australians through increased competition.

The increased competition in

- the iron ore product market;
- the markets for associated support industries; and
- the iron ore export market

that will result from the development of iron ore deposits in the Pilbara region, such as West Angelas or Hope Downs, following declaration of the Rail Track Service, and the resulting increased export earning and employment, will directly and significantly enhance the welfare of Australians.

The economic and regional development in the Pilbara regions, which will follow on from the development of these deposits, as set out below, will indirectly enhance the welfare of Australians, both in the Pilbara region, and nationwide, by way of a "flow on" effect.

Development of the Pilbara region

- 6.6.5 The development of the Pilbara region has significantly and positively impacted upon employment in a wide range of directly and indirectly associated industries. The Pilbara region currently produces \$7 billion worth of minerals and 10% of Australia's commodity product. Iron ore is a significant part of this.

The benefits to Australians from Pilbara development to date will continue with increased development via new mines such as West Angelas, and other adjacent potential mines such as Hope Downs, Hamersley Iron's Yandicoogina Junction Deposit and the Giles Mini/Rhodes Ridge, as well as other deposits yet to be identified, which may also benefit from access to the Rail Track Service to transport ore to port facilities.

The West Australian Government has recognised the importance of suitable and efficient infrastructure to the ongoing viability and success of development in the Pilbara. To this end, it has developed detailed strategic plans for the development of industrial estates throughout the Pilbara, and the instigation of a detailed Minerals Province Study of the Central Pilbara (which involves West Angelas and the Hamersley Rail Infrastructure Facility), in relation to coordinated development of infrastructure and service needs.

In broader terms, the development of West Angelas, or other iron ore deposits in the Pilbara which may also be promoted by access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility will have a significant beneficial effect on Australia's economic climate and balance of payments, resulting from iron ore development and export earnings, with a resultant gain for all Australians.

Ecologically Sustainable Development

- 6.6.6 Use of existing rail facilities, as opposed to duplication of existing facilities, is consistent with the principle of ecologically sustainable development, and is in the public benefit as recognised under clause 1(3) of the Competition Principles Agreement..

The Western Australian State Government strongly supports the sharing of existing resource development infrastructure in the Pilbara region, in particular, rail infrastructure. The Department of Resources Development has advised RRIA that:

*"The State preferred position in terms of the railway is for the maximum practical utilisation of the existing HI railway system and corridor. This would see the best use made of the existing infrastructure and the minimisation of environmental impacts from rail construction. The State does not favour seeing the Central Pilbara criss-crossed by railways"*¹⁷.

¹⁷ Letter dated 3 June 1997 - see Annexure 7.

The environmentally sustainable and safe nature of the development of West Angelas is supported by the fact that the ERMP lodged by RRIA in relation to West Angelas received no opposing submissions from the general public.

Reopening of Pellet Plant

- 6.6.7 The economically viable development of the West Angelas deposit itself will allow RRIA to proceed with a full feasibility study to redevelop its 5Mtpa pellet plant at the Cape Lambert Port. The upgrade of this plant will only occur if West Angelas ore is received at Cape Lambert, and this in turn depends upon economically viable rail transport from West Angelas. The pellet plant upgrade will prime RRIA to take advantage of the increasing worldwide demand for pellets, as well as the ability to provide significant feed stock for several iron ore processing projects currently being developed or considered throughout Western Australia. The ability of RRIA to enter this world pellet market, and the development and support of the iron ore processing projects, will have a considerable public benefit by increasing the welfare of all Australians, on similar terms to those set out above in relation to iron ore development generally.

Reduced Land Access Requirements

- 6.6.8 Access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility will reduce land access requirements such as crossings through National Parks, pastoral leases or other forms of Land Administration Act or Mining Act tenure. This will reduce disruption to other activities conducted throughout the Pilbara region, and avoid the need for costly and lengthy delays arising from the need to negotiate fresh access to these areas. This will in turn play an important role in maintaining harmony between all stakeholders in the Pilbara region.

Native Title

- 6.6.9 Access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility, and through the existing Hamersley rail corridor, will minimise the interference with native title rights which would result if a separate rail corridor was to be created, or a separate rail line and infrastructure was to be constructed.

Use of the existing corridor and line will ensure that the Native Title Act's "future act" procedures, which would be applicable to a new corridor or line, will also be largely avoided, and unnecessary pressure and workload upon the National Native Title Tribunal will be significantly reduced. The benefits of this are:

- (a) the Tribunal's resources are not wasted and it is able to concentrate upon existing or other new native title matters, which will have a considerable flow on benefit to other native title claimants and respondents, as well as the community as a whole; and
- (b) negotiations or determinations would be reduced in terms of number and time if RRIA were to simply access the Rail Track Service.

International Competitiveness

6.6.10 The increased competitiveness of Western Australian mineral producers, in particular, iron ore producers, as a result of shared existing facilities and the resulting economies of scale, is also a significant public interest benefit of declaration of the Rail Track Service. The increasing demand for iron ore by integrated steel makers worldwide and the accompanying evolution of the global steel and iron industry, both in terms of recovery, treatment and processing of iron ore, has led to a need for iron ore producers to adapt to this intensely competitive market. Access to the Rail Track Service will assist Pilbara based iron ore producers to maintain their competitiveness in this market.

In addition, Western Australian iron ore producers should strive to maintain their combined current position as the world's largest iron ore exporter. The infrastructure supporting Western Australian iron ore development has been constructed to allow for future capacity expansions. Western Australian proximity to future markets and existing growing markets ideally places it to maintain this position, but this significant advantage could be lost if economies of scale, created by access to existing infrastructure such as rail lines are ignored. As challenges increase for Western Australian iron ore producers, resulting from changing iron ore blends and increased tonnages of certain ores in iron mixes, every assistance and a minimum of hindrances should be afforded to the competitiveness of these producers.

Efficient Resource Allocation

6.6.11 Declaration of the Rail Track Service will ensure the efficient allocation of resources occurs, in relation to avoidance of the waste of resources used to plan, coordinate and complete construction of a duplicate rail line, as well as the resources used in construction. If access is obtained to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility, resources can be effectively and efficiently allocated to

enhancement of the Hamersley Rail Infrastructure Facility, if necessary, and to the development of the West Angelas deposit or other deposits, and to other areas such as improved iron ore processing facilities.

Implications Contrary to the Public Interest

6.6.12 There are no identifiable consequences or implications contrary to the public interest which will arise or result from access by RRIA, to the Hamersley Rail Infrastructure Facility, as set out in this application.

Submission

6.6.13 Accordingly it is submitted that declaration of the Rail Track Service will not be contrary to the public interest.

In addition, the Rail Track Service falls squarely within the definition of "service" and the Hamersley Rail Infrastructure Facility fits the concept of "facility" in Part IIIA, and therefore, provided the first five criteria in section 44H are met, declaration of the service is consistent with the policy objectives of Part IIIA.

The impact of the Federal Government's substantial development of competition policy and reform must be open to question if an application of this type is refused under the public interest criterion. It is in the public interest for an application, which falls within the policy objectives of Part IIIA, to be declared if other requisite factors are met, particularly in the context of a lack of an effective access regime for intrastate rail, or an applicable industry access code, under which a third party is able to gain access.

7. HOW ACCESS WOULD BE GAINED

7.1. RRIA access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility is technically and practically feasible because of the following:-

- the capacity of a railway line is only limited by the number of passing sidings;
- the existing spare capacity of the Hamersley Rail Infrastructure Facility and the Rail Track Service;
- the current usage by HI; and
- the limited planned usage by RRIA;
- the experience of RRIA and HI in heavy rail haulage operations; and

- previous experiences of RRIA and HI regarding shared use of parts of the Hamersley Rail Infrastructure Facility¹⁸.
- 7.2. However, to allow access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility, some modifications will need to be made to the facilities, and to RRIA's specifications for new rolling stock. In addition, some extensions may be required to the existing passing sidings on the Hamersley Rail Infrastructure Facility if HI or RRIA rail requirements increase.
- 7.3. RRIA locomotives would need to be fitted with radios with both RRIA and HI frequencies as well as HI in-cab signalling system, to allow the signalling services to operate safely and effectively. Other matters which will need to be addressed before RRIA access to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility occurs, are:
- compatibility of RRIA/HI wheel and rail profiles;
 - wheel maintenance standards of locomotives and ore cars;
 - maximum axle loadings to be used on the track;
 - standards for out of gauge loading (loads on flat cars);
 - communications standards to provide smooth handover of interline traffic with minimal delay/disruption; and
 - agreement as to an acceptable certificate of competency for locomotive crews covering both HI's and RRIA's railway operating rules, regulations and procedures.
- 7.4. The operational procedures envisaged to ensure a safe operation of HI rolling stock and RRIA rolling stock on the Hamersley Rail Infrastructure Facility are described in Annexure 11.

Submission

- 7.5. With the:
- experience of RRIA and HI in heavy rail haulage operations;
 - their respective existing safety record;
 - their respective safety equipment and detection procedures; and

¹⁸ Between 1988 and 1991 RRIA had temporary access to the HI rail line in connection with RRIA hiring of HI equipment (flat cars, P811 resleeper train as well as transfer of contracted maintenance equipment).

- operational procedures envisaged

it is submitted that access to the Rail Track Service is practically feasible and operationally safe.

8. ANY PRIOR EFFORTS TO NEGOTIATE ACCESS

- 8.1. RRIA and Hamersley have been involved previously in discussions on a RRIA submission for access to the Hamersley Rail Infrastructure Facility, and the existing rail corridor through which the Hamersley Rail Infrastructure Facility runs. However these discussions were inconclusive, with Hamersley indicating an unwillingness to continue forward to negotiations unless on their terms.

The history of these previous communications is set out below, but they serve to indicate the difficulty which RRIA may encounter in attempts to obtain access to the Hamersley Rail Infrastructure Facility under the Hamersley Agreement Act, and the importance of ACCC arbitration under Part IIIA if access by RRIA on reasonable and acceptable terms is to occur.

RRIA and Hamersley re-entered discussions for access to the Hamersley Rail Infrastructure Facility in April 1998, but as at the date of this application, there is no conclusive outcome. HI has maintained its previous position that access will only be permitted if it is the carrier in HI wagons of RRIA ore.

History of RRIA-Hamersley access negotiations

- 8.2. In February 1997, an informal discussion between RRIA and Hamersley took place in relation to shared access to railway infrastructure.
- 8.3. The RRIA proposal put to HI was for their consideration of an independent Central Pilbara rail operator. The outline of this proposal was for the dual tracking and use of HI's main Dampier to Tom Price railway line from the existing RRIA/HI overpass near Emu Siding through the Millstream-Chichester National Park paralleling up to Rosella Siding to Marandoo, then use of the full length of HI's Marandoo rail line and formation through the Karijini National Park toward HI's Yandicoogina deposit. This is the same facility to which RRIA seeks access pursuant to this application, subject only to the extension of the Hamersley Rail Infrastructure Facility east toward the Yandicoogina deposit, which has been constructed since these earlier negotiations.

Under this option, double tracking over the main Dampier to Tom Price section would have been accomplished by connecting the ends of HI's existing passing sidings between the RRIA/HI overpass and Rosella siding. This option would include improving sections within the track, particularly the existing bad curves through the Millstream-Chichester National Park and other bad areas of the track that damage ore car draw gear.

8.4. The advantages/disadvantages to RRIA of this proposal identified by RRIA for the West Angelas project were:

(a) Advantages:

- the length of the new track required for accessing West Angelas would be reduced to approximately 250 kms with a substantial reduction in capital costs for construction of the line;
- the need for trains to stop at passing sidings would be eliminated on dual track sections which reduces round trip cycle times by around 2 hours per trip, which represents a saving of approximately 8% of total train cycle time.

This reduction in running time enables more time for dumping of loaded cars hence the need for the purchase of additional cars for make-up time is eliminated;

- the reduced cycle time for empty and loaded trains results in fuel cost savings;
- RRIA's track maintenance costs are reduced as a result of sharing the cost with HI;
- operation of the lines would be considerably simplified for both parties and the potential for head on collisions and accidents at passing sidings eliminated over the full length of the parallel tracking; and
- dual track reduces the risk of train schedule delays.

(b) Disadvantages:

- all train movements on the parallel track would be controlled by the independent Central Pilbara rail operator, whereas currently RRIA has total control of its own operations; and
- length of rail haul may be increased, adding to distance travelled by rolling stock, thus reducing any fuel cost savings and adding to rolling stock maintenance costs; and

- some changes, adding to capital cost, may be required in order to ensure that rolling stock loads of RRIA trains are compatible with HI load limits.
- 8.5. In April 1997 an agreement in principle was reached as to the basis on which further discussions would take place, namely, a "no prejudice" basis, and certain confidentiality requirements.
- 8.6. Access was sought on open terms, not under the requirements of the Hamersley Agreement Act or Part IIIA.
- 8.7. The Minister for Resources endorsed and supported these negotiations, and encouraged Hamersley's co-operation with RRIA, in order to facilitate the orderly development of infrastructure in the Pilbara, and also considered the suitability of the limited rail access provisions of the Hamersley Agreement Act. However the Minister has not intervened to try and set the conditions for access.
- 8.8. Draft Confidentiality Deeds relating to the supply of infrastructure access information were exchanged between RRIA and Hamersley in June 1997. However an agreement was never finalised between the parties.
- 8.9. In July 1997 a more detailed proposed was put to Hamersley. This proposal was rejected by the Rio Tinto Board in August/September 1997 and Hamersley advised that they may be interested if:
- HI was contracted as the carrier for RRIA's ore from West Angelas to Cape Lambert; and
 - HI would construct and pay for the necessary track, communications and all rolling stock (locomotives and wagons). Under this arrangement RRIA would be required to pay a negotiated capital service charge and an operating charge, based on operating costs and a management fee.

This suggestion was based on the Hamersley State Agreement which allows third party use, but on HI cost terms without right to appeal to an arbitrator on the fees to be charged.

Current RRIA-Hamersley access negotiations

- 8.10. At RRIA's instigation, RRIA and Hamersley have re-commenced discussions in relation to RRIA access to the Hamersley Rail Infrastructure Facility. These discussions differ from the previous negotiations in that RRIA is seeking access only to the existing Hamersley Rail Infrastructure Facility, and is no longer pursuing the dual tracking option. The type of access sought by RRIA is substantially identical to that sought pursuant to this application. Whilst

Hamersley continues to negotiate with RRIA, and to date, has been receptive to discussions, Hamersley is still insisting on a negotiation involving a "full service", whereby HI trains will haul, on HI owned track, RRIA ore.

9. DURATION OF DECLARATION

The declaration of Rail Track Service provided by the Hamersley Rail Infrastructure Facility is sought immediately¹⁹, to last for a period ending no earlier than 10 years after iron ore production begins at West Angelas. This is the time period in which fundamental structural change in the market or ancillary vertical markets or both may become apparent. Fundamental structural change may arise through changes in rail technology, alternative transportation services or market demand.

As set out in part 6.2 of this application, there is no other party which would contemplate the duplication of all or part of the Rail Track Service, and no such existing or unforeseen party is expected to be able to do so, within the ten year time period. However, if the industry dynamics are such that the market realities negate the analysis presented in this application, an application can be made at that time to revoke the requested declaration of the Rail Track Service, but this remote possibility should not prevent declaration pursuant to this application.

The declaration is requested to be effective immediately so that further access negotiations with HI may be continued under the protection of Part IIIA of the TPA.

10. OTHER RELEVANT MATTERS

Access by RRIA to the Rail Track Service provided by the Hamersley Rail Infrastructure Facility is an effective "win-win" situation for both parties:

- RRIA has access to a Rail Track Service on reasonable terms;
- HI will obtain the benefits of the Rail Track Service fees paid by RRIA, (higher capacity resulting in lower average unit costs) which will increase substantially as West Angelas production increases and Marra Mamba iron ore markets are developed; and
- HI costs of track maintenance and monitoring will also be effectively reduced due to the contribution made by RRIA and this will assist with the ability to increase substantially the capacity of the Facility.

These benefits to HI will continue to increase as other iron ore producers such as the Hancock Joint Venture also seek access to the Hamersley Rail Infrastructure Facility.

¹⁹ Subject to section 44L(1) of the TPA

In addition, there is no practical or technical impediment to RRIA access, and no disadvantages to HI. The Hamersley Rail Infrastructure Facility currently has ample spare capacity, which can be increased further. In addition an effective control and safety system can be implemented easily.