

20/85

IN THE PRIVY COUNCIL

NO. 7 of 1985

O N A P P E A L
FROM THE FULL COURT OF THE SUPREME COURT OF
WESTERN AUSTRALIA

B E T W E E N :

FORSAYTH OIL & GAS N.L.

Appellant

and

LIVIA PTY. LIMITED

Respondent

RECORD OF PROCEEDINGS

Linklaters & Paines
Barrington House
59/67 Gresham Street
London
EC2V 7JA

Coward Chance
Royex House
Aldermanbury Square
London
EC2V 7LD

Agents for the Appellant

Agents for the Respondent

IN THE PRIVY COUNCIL)
ON APPEAL FROM THE)
FULL COURT OF THE)
SUPREME COURT OF)
WESTERN AUSTRALIA)
APPEAL NO. 443 OF)
1984)

No. 7 of 1985

APPEAL TO HER MAJESTY
IN COUNCIL

B E T W E E N :

FORSAYTH OIL & GAS N.L.

Appellant
(Plaintiff)

- and -

LIVIA PTY. LTD.

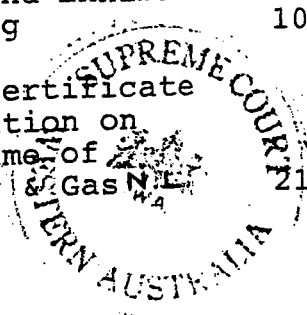
Respondent
(Defendant)

RECORD OF PROCEEDINGS

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NUMBER	DESCRIPTION OF DOCUMENT	DATE
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IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. 56 of 1984

B E T W E E N:

FORSAYTH OIL & GAS N.L.

Plaintiff

and

LIVIA PTY. LTD.

Defendant

ORIGINATING SUMMONS
(FILED the 17/05 day of May 1984)

LET LIVIA PTY. LTD. of 21 Howard Street, Perth in the State
of Western Australia within 10 days after the service of
this summons on it, exclusive of the day of such service,
cause an appearance to be entered for it to this summons and
thereafter attend before the Judge sitting to hear such
summons at such time and place as shall hereafter be fixed
for such hearing.

10

This summons is issued upon the application of FORSAYTH OIL
& GAS N.L. of C/- John C. Keast, Solicitor, 9th Floor, 4-10
Martin Place, Sydney in the State of New South Wales who
claims:

1. A declaration that the liability of the Company to
the holders of options granted by the Company for
the acquisition of \$1.00 shares in the Company
is:-

20

Document 1 - Originating Summons
in Action No. 2252 of 1984
(formerly Company No. 56 of 1984):

1 10.5.1984

(a) to grant to such holders, upon application by them, options to acquire 25¢ shares in the Company, on the basis that there be one option to acquire one 25¢ share in the Company at a price of 20¢ in exchange for every 10 options to acquire \$1.00 shares in the Company thereupon surrendered to the Company, or

(b) to issue to such holders, upon their purporting to exercise an option to acquire \$1.00 shares in the Company, 25¢ shares in the Company on the basis that one 25¢ share in the Company be issued at a price of 20¢ in respect of every 10 options to acquire \$1.00 shares in the Company sought to be exercised.

10

2. A declaration that the rights conferred upon the holders of options to acquire \$1.00 shares in the Company have been varied by the reduction of capital of the Company effected pursuant to the special resolution of the Company on the 15th March 1983 so that such holders are entitled to acquire one 25¢ share in the Company at a price of 20 cents each for every 10 options to acquire \$1.00 shares in the Company which they may hold.

20

Document 1 - Originating Summons in
Action No. 2252 of 1984 (formerly Company
No. 56 of 1984): 10.5.1984

3. An order for the payment of costs of these proceedings by the defendant to the plaintiff.

DATED the 10~~th~~ day of MAY 1984

This SUMMONS was taken out by Messrs Muir Williams Nicholson solicitors for the said plaintiff whose address for service is 9th Floor, Austmark Centre, 15-17 William Street, Perth.
Tel. 327.5777 Ref. KW KW24

NOTE: If the defendant does not enter an appearance at the Central Office, Supreme Court, Barrack Street, Perth within the time above mentioned, and thereafter attend before the Judge sitting to hear such summons at such time and place as shall hereafter be fixed for such hearing, such order will be made and proceedings taken as the Judge may think just and expedient. 10

Document 1 - Originating Summons in
Action No. 2252 of 1984 (formerly
Company No. 56 of 1984): 10.5.1984

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

Company No. 114 of 1984

B E T W E E N :

LIVIA PTY. LTD.
Plaintiff

- and -

FORSAYTH OIL & GAS N.L.
Defendant

ORIGINATING SUMMONS

(FILED THE 3rd DAY OF AUGUST, 1984)

10

LET FORSAYTH OIL & GAS N.L. of 111 St. George's Terrace
Perth in the State of Western Australia Within 10 days
after the service of this Summons on it, exclusive of the
day of such service, cause an appearance to be entered for
it to this Summons and thereafter attend before the Judge
sitting to hear such Summons at such time and place as shall
hereafter be fixed for hearing.

This Summons is issued upon the application of Livia Pty.
Ltd. of 21 Howard Street, Perth in the State of Western
Australia who claims:-

20

- (i) An order that this matter be consolidated
with and be heard together with the following
matter namely Company No. 56 of 1984,
Forsayth Oil & Gas N.L. -v- Livia Pty. Ltd.;
- (ii) Such orders for the abridgement of time and
otherwise as may be necessary to enable this
matter to be heard together with the matter
referred to in (i) hereof;

Document 2 - Originating Summons in Action
No. 2253 of 1984 (formerly Company No.

4 114 of 1984):3.8.1984

- (iii) In the alternative to the declarations sought in the Originating Summons filed the 10th day of May, 1984 in the said matter Company No. 56 of 1984, a declaration as to the rights conferred upon the holders of options to acquire \$1.00 shares in the Company, and the liability of the Company in the event of the exercise of such options, in the light of the events which have happened.
- (iv) Such further or other orders or declarations as the Court shall deem just or necessary. 10

DATED the day of August, 1984.

TO: The Defendant,
 AND TO: Its Solicitors,
 Messrs. Muir Williams Nicholson,
 9th Floor,
 Austmark Centre,
 15-17 William Street,
 PERTH, W.A. 6000.

If the Defendant does not enter an appearance at the Central Office, Supreme Court, Barrack Street, Perth within the time abovementioned and thereafter attend before the Judge sitting to hear such Summons at such time and place as shall hereafter be fixed for such hearing such order will be made and proceedings taken as the Judge may think just and expedient. 20

THIS ORIGINATING SUMMONS was taken out by Messrs. Downing & Downing, Solicitors for the Plaintiff of 21 Howard Street, Perth, W.A. 6000.
 TEL: 322 3355

REF: MES:RKM 39:5107

Document 2 - Originating Summons in Action
 No. 2253 of 1984 (formerly Company No.114
 of 1984): 3.8.1984

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. 56 of 1984

B E T W E E N:

FORSAYTH OIL & GAS N.L.

Plaintiff

and

LIVIA PTY. LTD.

Defendant

AFFIDAVIT OF MICHAEL JOHN EVANS
IN SUPPORT OF ORIGINATING SUMMONS
(SWORN THE 10 DAY OF MAY 1984)

10

I, MICHAEL JOHN EVANS of No. 5, Upland Gardens Willetton in the State of Western Australia, Company Director, being duly sworn hereby make oath and say as follows:-

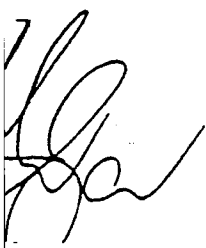
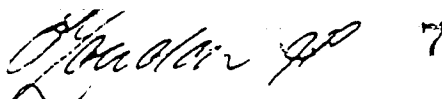
1. I am a director of Forsayth Oil & Gas N.L. ("the Company") and am duly authorised by the Company to make and present this affidavit of its behalf.
2. The Company was duly incorporated in the State of New South Wales. Now produced to me and exhibited hereto, marked "A", is a copy of the Certificate of Incorporation of the Company. An application has been made for the transfer of the incorporation of the Company to the State of Western Australia and that application is pending before the National Companies Securities Commission.

20

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984

3. True copies of Articles 30-35 of the Articles of Association of the Company are exhibited hereto marked "B".
4. Prior to the 15th day of March 1983, the nominal share capital of the Company was \$200,000,000.00 divided into 200,000,000 shares of \$1.00 each. The market value of the said shares was 2 cents each at the material time.
5. By Article 34 of the Articles of Association of the Company, the Company was empowered by special resolution to reduce its capital. 10
6. Now produced and exhibited hereto marked "C" is a copy of the Special Resolution for the reduction of the capital of the Company which was passed pursuant to Article 34 at the Annual General Meeting of the Company held at 1st Floor, 111 St. George's Terrace, Perth on the 15th day of March 1983.
- 7 Exhibited hereto, marked "D" is a copy of the Order of the Supreme Court of the State of New South Wales granted on the 16th day of May 1983 confirming the reduction of capital of the Company pursuant to the special resolution of the members 20

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984


 7

of the Company referred to in paragraph 6 hereof.

8. In consequence of the reduction of capital of the Company, the Company's present nominal shareholding comprises \$20,000,000.00 divided into 80,000,000 shares of 25¢ each.
9. Prior to the reduction of capital of the Company and at a time when the nominal share capital of the Company comprised \$200,000,000.00 divided into 200,000,000 shares of \$1.00 each, the Company granted options to acquire \$1.00 shares in the Company "subject to the Memorandum and Articles of Association of the Company". Exhibited hereto, marked "E" is a sample form of the options granted by the Company. At the material time those options had no market value and although such options were listed as securities, no sales thereof were taking place. 10
10. Following the aforesaid reduction in the capital of the Company, the shareholders in the Company became the holders of 1 x 25¢ share for every 10 x \$1.00 shares formerly held by them. 20
11. The Company submits that as the consequence of such reduction in capital, the rights of the holders of options to acquire \$1.00 shares in the

Company, at a price of 25¢ each were varied so that such option holders thereupon became entitled to acquire 1 x 25¢ share, at a price of 20¢, for every 10 x \$1.00 shares to which their options referred.

12. The defendant, Livia Pty. Ltd., having acquired a number of the \$1.00 options has stated in its letter to the Company dated the 7th May 1984, that it intends to exercise the options to acquire \$1.00 shares and that it has "not accepted the general offer to exchange its '84 options for '85 options".

10

Now produced and exhibited hereto, marked "F" and "G" respectively are copies of the letters written by the defendant to the Company on the 3rd and 7th days of May 1984 respectively.

13. Following the reduction of capital of the Company, it is not now possible for the Company to issue fully paid \$1.00 shares in the Company.

14. I believe that the defendant purchased the options held by it after the reduction in the capital of the Company and with knowledge of such reduction.

20

15. The Company seeks directions and declarations from this Honourable Court in accordance with the

Document 3 - Affidavit
of Michael John Evans
sworn 10.5.1984

9

Originating Summons herein and I make this affidavit in support of the relief therein sought.

SWORN by the said MICHAEL JOHN EVANS at *Perth* in the State of Western Australia this *10th* day of *May* 1984
Before me:

)
) *[Handwritten Signature]*
)
)
)

[Handwritten Signature]
A Commissioner of the Supreme Court for taking affidavits/A Justice of the Peace, LOUDON
JUSTICE OF THE PEACE
WESTERN AUSTRALIA

10

This AFFIDAVIT was prepared and filed by Muir Williams Nicholson, Solicitors of 9th Floor, Austmark Centre, 15-17 William Street, Perth.

Tel. 327.5777

Ref. KW23

Document 3 - Affidavit of Michael John Evans sworn 10.5.1984

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. of 1984

FORSAYTH OIL & GAS N.L.


Plaintiff

and

LIVIA PTY. LTD.

Defendant

This is the exhibit marked
with the letter "A" referred 10
to in the affidavit of
MICHAEL JOHN EVANS
sworn the 10~~th~~ day of MAY
1984. Before me:



A Commissioner of the Supreme
Court for taking affidavits/A
Justice of the Peace.

T. LOUDON
JUSTICE OF THE PEACE
WESTERN AUSTRALIA

MUIR WILLIAMS NICHOLSON
SOLICITORS
9TH FLOOR
AUSTMARK CENTRE
15-17 WILLIAM STREET
PERTH W.A. 6000

20

Tel. 327.5777

Ref. KW

Document 3 - Affidavit of Michael John
Evans sworn 10.5.1984 and Exhibits
thereto being: "A" - Copy Certificate of
Incorporation on Change of Name of
Forsayth Oil & Gas NL: 21.10.1980



No. of Company
116749-46

Certificate of Incorporation on Change of Name of Company

Companies Act, 1961—Section 21 (6)

This is to Certify that

Forsayth Mineral Exploration N.L.

which was on the eleventh day of December, 1969,
incorporated under the Companies Act, 1951 did on the twenty-first
day of October, 1980, change its name to

10

FORSAYTH OIL & GAS N.L.

and that the company is a No Liability Company.

Given under the seal of the Corporate Affairs Commission at Sydney;
this twenty-first day of October, 1980.

Exd.

F. J. O. Ryan
Commissioner 

12

Document 3 - Affidavit of Michael John Evans
sworn 10.5.1984 and Exhibits thereto being
"A" - Copy Certificate of Incorporation on
Change of Name of Forsayth Oil & Gas NL:
21.10.1980

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. of 1984

FORSAYTH OIL & GAS N.L.

Plaintiff

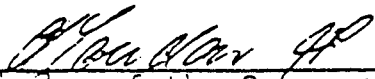
and

LIVIA PTY. LTD.

Defendant

This is the exhibit marked
with the letter "B" referred
to in the affidavit of
MICHAEL JOHN EVANS
sworn the *10th* day of *MAY*
1984. Before me:

10


A Commissioner of the Supreme
Court of Western Australia for
taking affidavits/A Justice of
the Peace

T. LOUDON
JUSTICE OF THE PEACE
WESTERN AUSTRALIA

MUIR WILLIAMS NICHOLSON
SOLICITORS
9TH FLOOR
AUSTMARK CENTRE
15-17 WILLIAM STREET
PERTH W.A. 6000

20

Tel. 327.5777

Ref. KW

KW25

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984 and
Exhibits thereto being: "B" Extract
from Articles of Association of
Forsayth Oil & Gas NL

ALTERATION OF CAPITAL

30. The Company in general meeting may by ordinary resolution do one or more of the following:-
- (a) increase its share capital by the creation of new shares of such amount as it thinks expedient;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (c) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination; 10
 - (d) subdivide its shares or any of them into shares of smaller amount than is fixed by the Memorandum so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (e) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled. 20
31. Any new shares shall be issued upon such terms and conditions and with such rights and privileges attached thereto as the Directors shall determine; and in particular such shares may be issued (subject to the provisions for the time being subsisting of any regulation of any Stock Exchange on which the shares of the Company are listed) with a preferential or qualified 30

12.

Document 3 - Affidavit of
Michael John Evans sworn
10.5.1984 and Exhibits thereto
being: "B" - Extract from Articles
of Association of Forsayth Oil &
Gas NL

right to dividends and in the distribution of assets of the Company.

32. The Directors may before the issue of any new shares determine that the same or any of them shall be offered in the first instance and either at par or at a premium or at a discount to all the then holders of any class of shares in proportion to the number of shares held by them or make any other provisions as to the issue and allotment of the new shares.
33. Except so far as otherwise provided by the conditions of issue or by these presents any capital raised by the creation of new shares shall be considered part of the original capital and shall be subject to the provisions herein contained with reference to calls transfer and transmission and otherwise. 10
34. The Company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required by law. 20
35. The Resolution whereby any share is subdivided may determine that as between the holders of the shares resulting from such subdivision one or more of such shares shall have some preference or special advantage as regards dividend capital voting or otherwise over or as compared with the others or other.

MODIFICATION OF RIGHTS

36. If at any time the share capital is divided into different classes of shares the rights or conditions attached to any class (unless otherwise provided by the terms of 30

13.

Document 3 - Affidavit of Michael John Evans sworn 10.5.1984 and Exhibits thereto being: "B" - Extract from Articles of Association of Forsayth Oil & Gas NL

REGISTRAR *WJ*

SUPREME COURT OF WESTERN AUSTRALIA

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. of 1984

FORSAYTH OIL & GAS N.L.

Plaintiff

and

LIVIA PTY. LTD.

Defendant

This is the exhibit marked
with the letter "C" referred
to in the affidavit of
MICHAEL JOHN EVANS
sworn the 10th day of MAY
1984. / Before me:

10

T. Loudon JP
A Commissioner of the Supreme
Court of Western Australia for
taking affidavits/A Justice of
the Peace

T. LOUDON
JUSTICE OF THE PEACE
WESTERN AUSTRALIA

MUIR WILLIAMS NICHOLSON
SOLICITORS
9TH FLOOR
AUSTMARK CENTRE
15-17 WILLIAM STREET
PERTH W.A. 6000

20

Tel. 327.5777

Ref. KW

KW25

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984 and
Exhibits thereto being: "C" -
Copy Minutes of the Annual General
Meeting of Shareholders of Forsayth
Oil & Gas NL: 15.3.1983

16

16

MINUTES OF THE ANNUAL GENERAL MEETING OF SHAREHOLDERS OF FORSAYTH OIL & GAS N.L.				380
	HELD AT	ON	TIME	SHEET No
	1st Floor, 111 St. George's Tce, PERTH	15th March, 1983	10.05 a.m.	- 1 -

PRESENT:

J.C. MORRIS (Chairman)
J.G. EDDY

INAFFENDANCE : K. LANGE (Secretary)

OTHERS : As per Attendance Register

NOTICE OF MEETING:

IT WAS RESOLVED that the notice of meeting be taken as read.

PREVIOUS MINUTES:

IT WAS RESOLVED that the Minutes of the previous Meeting be signed as a true and correct record.

GENERAL BUSINESS:

Accounts

IT WAS RESOLVED that the Balance Sheet as at the 30th September, 1982, Profit and Loss Statement for the year then ended together with the reports of the Directors and Auditors therein be adopted.

Elect Directors

John Graydon Eddy retired in accordance with the Articles of Association of the Company and offered himself for re-election.

IT WAS RESOLVED that Mr. John Graydon Eddy be re-elected as a Director.

Trevor William Tyson being eligible and having been nominated offered himself for election.

IT WAS RESOLVED to elect Mr. Trevor William Tyson as a Director.

SPECIAL BUSINESS
SPECIAL RESOLUTIONS:

Reduction of Authorised Capital

IT WAS RESOLVED that subject to the confirmation of the Supreme Court of New South Wales and pursuant to Section 123(1) of the Companies (New South Wales) Code ("the Code") and as authorised by Article 34 of the Articles of Association the share capital of the Company be reduced from \$200,000,000 divided into 200,000,000 shares of \$1.00 each to \$20,000,000.00 divided into 80,000,000 shares of 25 cents each.

Alteration of Memorandum of Association

IT WAS RESOLVED that subject to the passing of resolution (4) above by the shareholders that the Memorandum of Association of the Company be amended by deleting the existing Clause 4 and inserting:

"The share capital of the Company is \$20,000,000.00 divided into 80,000,000 shares of 25 cents each. The shares in the original or any increased or reduced capital may be divided into several classes and there may be attached to the shares whether original or otherwise respectively any preferential qualified special or deferred rights privileges and disabilities or conditions and any of such shares for the time being unissued may from time to time be issued with any such rights whether in respect of dividend or repayment of capital or both or any such special privilege over any share previously issued or then about to be issued or with such deferred rights disabilities or conditions as compared with any other shares previously issued or then about to be issued and with any special or restricted rights or without any right of voting and generally on

CHAIRMAN'S SIGNATURE
AND DATE OF SIGNING

MEETING OF THE ANNUAL GENERAL MEETING OF SHAREHOLDERS OF FORSAyth OIL & GAS N.L.

Held At	On	Time	Sheet
	15.3.83		- 2 -

such terms and subject to such conditions and provisions as may from time to time to be determined in accordance with the Articles of Association of the time being in force."

6. Reduction of Issued Capital. IT WAS RESOLVED that subject to the passing of resolutions (4) and (5) above and the confirmation of the Supreme Court of New South Wales and pursuant to Articles 34 and 35 of the Articles of the Company and Section 123 of the Code the paid up capital of the Company be reduced from \$127,104,644.36 (comprising 112,364,727 fully paid shares of \$1.00 each; 3,148,018 contributing shares of \$1.00 paid to 62 cents each and 21,313,577 contributing shares of \$1.00 paid to 60 cents and forfeited through non-payment of calls) to \$3,179,190.13 (comprising 11,236,473 fully paid shares of 25 cents each; 314,802 contributing shares of 25 cents paid to 16 cents each and 2,131,358 contributing shares of 25 cent paid to 15 cents and forfeited through non-payment of calls) by cancelling the sum of \$123,925,454.23 being paid up capital which is lost and is also unrepresented by available assets to the extent of 0.975 cents per share on each of the fully paid shares (total \$109,555,608.82) and to the extent of 0.604 cents per share on each of the partly paid shares (total \$1,901,402.87) and to the extent of 0.585 cents per share on each of the forfeited shares (total \$12,468,442.54). Fractions resulting from the reduction of capital will be rounded up to the next highest number.

7 Authority To Alter State of Incorporation IT WAS RESOLVED that the directors be authorised to apply on behalf of the Company to the National Companies and Securities Commission for a certificate authorising the Company to make an application under the provisions of the Law in force in Western Australia, 30 for transfer of incorporation of the Company to Western Australia.


ORDINARY RESOLUTIONS:

8. Placement Facility IT WAS RESOLVED that the directors be authorised to place at their discretion before the expiration of three months from the date of the Supreme Court of N.S.W. approving resolutions (4) (5) and (6) above up to 5,000,000 fully paid shares of 25 cents each and 5,000,000 options to subscribe for fully paid 25 cent shares exercisable at 20 cents each on or before the 31st December, 1985 (subject to resolutions (4), (5) and (6) being 40 passed and approved by the Supreme Court) either in part or whole at a price not less than 80% of the market price at the time of the placement.

Any such placement or placements will be made by clients of any member firm of a recognised Stock Exchange or to institutional investors.

9. New Options IT WAS RESOLVED that subject to the passing of resolutions (4), (5), (6) and (8) set out above, that the holders of options granted by the Company to purchase fully paid \$1.00 shares in the Company on or before the 1st June, 1984 at an exercise price of 25 cents be offered one option to acquire one fully paid 25 cent share exercisable on or before the 31st December, 1985 at an exercise price of 20 cents per option for every ten options currently held and where as a result of the foregoing any option holder becomes entitled to a fraction of an option to acquire a fully paid 25 cent share such option holder receive one option exercisable on or before the 31st December, 1985 at an exercise price of 20 cents to purchase a fully paid share in respect of that fraction.

CHAIRMAN'S SIGNATURE AND DATE OF SIGNING

18 

ETING OF THE ANNUAL GENERAL MEETING OF SHAREHOLDERS OF FORSAYTH OIL & GAS N.L.

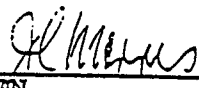
HELD AT	ON	TIME	SHEET No
	15.3.83		- 3 -

The Chairman announced the following results of polls called on resolutions 4, 5 and 6:-

<u>Resolution</u>	<u>For</u>	<u>Against</u>	-
4	10,269,049	657,150	
5	10,187,949	657,150	
6	10,187,949	654,150	

CLOSURE: There being no further business the meeting was declared closed at 10.55 a.m. 10

SIGNED AS A TRUE AND CORRECT RECORD



 CHAIRMAN

Document 3 - Affidavit of Michael John Evans sworn 10.5.1984 and Exhibits thereto being: "C" - Copy Minutes of the Annual General Meeting of Shareholders of Forsayth Oil & Gas NL: 15.3.1983

19

10

CHAIRMAN'S SIGNATURE
 AND DATE OF SIGNING

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. of 1984

FORSAYTH OIL & GAS N.L.

Plaintiff

and

LIVIA PTY. LTD.

Defendant

This is the exhibit marked
with the letter "D" referred
to in the affidavit of
NICHOL JOHN EVANS
sworn the *10th* day of *MAY*
1984. Before me:

10

T. Loudon JP
A Commissioner of the Supreme
Court of Western Australia for
taking affidavits/A Justice of
the Peace

T. LOUDON
JUSTICE OF THE PEACE
WESTERN AUSTRALIA

MUIR WILLIAMS NICHOLSON
SOLICITORS
9TH FLOOR
AUSTMARK CENTRE
15-17 WILLIAM STREET
PERTH W.A. 6000

20

Tel. 327.5777

Ref. KW

KW25

20

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984 and
Exhibits thereto being: "D" - Copy
order of Supreme Court of New South
Wales in Action No.1981 of 1983:
16.5.1983

Copy for Corporate Affairs Commission

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

EQUITY DIVISION

No. 1981 of 1983

FORSAYTH OIL
& GAS NL

Plaintiff

AND

THE COMPANIES (NSW)
CODE

ORDER

SMITHERS WARREN & TOBIAS
with DAVENPORT MANT
Solicitors
20 Bond Street
SYDNEY

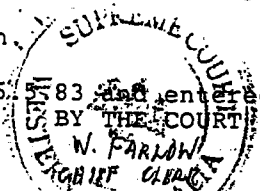
DX: 107 SYDNEY

TEL: 20561

THE COURT ORDERS that -

1. all of the provisions of Section 123 (3) of the Companies (NSW) Code shall not apply in respect of all creditors of the Plaintiff Company;
2. the reduction of the capital of the Plaintiff Company passed by Special Resolution of the Annual General Meeting of the Plaintiff Company held 15 March, 1983 to the effect that the nominal capital of the Plaintiff Company be reduced from \$200,000,000.00 divided into 200,000,000 shares of \$1.00 each to \$20,000,000.00 divided into 80,000,000 shares of \$0.25 each and to the effect that the paid up capital of the Plaintiff Company be reduced from \$127,104,644.36 to \$3,179,190.15 be confirmed so that thereafter the nominal capital of the Plaintiff Company shall be \$20,000,000.00 divided into 80,000,000 shares of \$0.25 each and as at the date of this Order the paid up capital shall be \$3,179,190.13 comprised of 11,236,473 fully paid shares of \$0.25 each, 314,802 contributing shares of \$0.25 paid to \$0.16 each and 2,131,358 contributing shares of \$0.25 forfeited through non payment of calls and paid to \$0.15 each.

Ordered 16.5.83 and entered
26.5.83 BY THE COURT



IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. of 1984

FORSAYTH OIL & GAS N.L.

Plaintiff

and

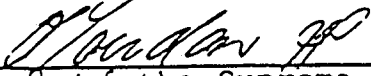
LIVIA PTY. LTD.

Defendant

This is the exhibit marked
with the letter "E" referred
to in the affidavit of
MICHAEL JOHN EVANS
sworn the *10th* day of *MAY*
1984. Before me:

10

SUPREME COURT


A Commissioner of the Supreme
Court of Western Australia for
taking affidavits/A Justice of
the Peace

T. LOUDON
JUSTICE OF THE PEACE
WESTERN AUSTRALIA

MUIR WILLIAMS NICHOLSON
SOLICITORS
9TH FLOOR
AUSTMARK CENTRE
15-17 WILLIAM STREET
PERTH W.A. 6000

20

Tel. 327.5777

Ref. KW

KW25

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984 and
Exhibits thereto being: "E" -
Sample of Option Certificate of
Forsayth Oil & Gas NL:

22
22

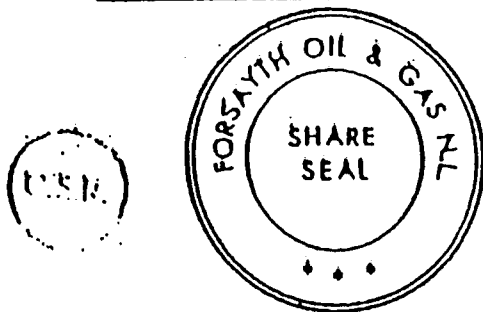
OPTIONS

MACLEOD MR JOHN JOSEPH 4 AWHINA PLACE KALLAROO WA 6025	DATE	18/ 9/80
	REGISTER	SYDNEY

THIS IS TO CERTIFY that the abovenamed is the registered holder, subject to the Memorandum and Articles of Association of the Company, of the undernoted options over fully paid shares of \$1.00 each subject to the conditions overleaf.

REFERENCE	CERTIFICATE No.	No OF OPTIONS
A 1980 0	1424	*****1000*
No. OF OPTIONS * EXACTLY ONE THOUSAND *****		

GIVEN UNDER THE SHARE SEAL OF THE COMPANY



[Signature]
 DIRECTOR

[Signature]
 SECRETARY

THE OPTIONS SPECIFIED HEREUNDER EXPIRE ON THE 1ST JUNE 1984
 THIS CERTIFICATE MUST BE SURRENDERED BEFORE THE WHOLE OR ANY PORTION OF THE OPTIONS CAN BE TRANSFERRED.

23

Document 3 - Affidavit of Michael John Evans sworn 10.5.1984 and Exhibits there-to being: "E" - Sample of Option Certificate of Forsyth Oil & Gas NL:

FORSAYTH OIL & GAS N.L.

APPLICATION FOR SHARES

To the Directors

I/We Mr. _____
Mrs. _____
Miss _____
Please use block letters

Full Address _____

hereby exercise my/our option for _____

_____ in words _____

ordinary fully paid shares of \$1.00 each in
FORSAYTH OIL & GAS N.L.
and I/We enclose (being application and allotment money)

Payment at the rate of 25 cents per share \$ _____

I/We request you allot such shares to me/us and I/We agree to accept them subject to the company's Memorandum and Articles of Association. If this application is signed by an attorney, the attorney hereby declares that he has no notice of revocation of the power under authority of which this application is signed. Companies should sign under Seal.

SIGNATURE(S) _____

Date Signed _____

CONDITIONS UPON WHICH THE OPTIONS MAY BE EXERCISED, AND THE EFFECT OF SUCH EXERCISE

Each option may be exercised by forwarding to Capital Share Registry Pty. Ltd. 15th Floor, 200 St. George's Terrace, Perth, W.A. 6000, the application for shares duly completed together with payment of 25 cents (being the application and allotment money for each new share taken up) and surrendering to the company of this certificate. The options may be exercised at any time prior to the 1st June 1984.

The options may be transferred by an instrument (duly stamped where necessary) in the form commonly used for transfer of shares at any time prior to the 1st June 1984. Shares issued on the exercise of options will be allotted after receipt of all relevant documents and payments and will rank equally with the existing ordinary shares of the company. Applications for listing on the Official Lists of the Stock Exchanges on which the Company's Securities are listed will then be made of the shares then in issue pursuant to this option.

NOTE: OPTIONS NOT EXERCISED BY 1st JUNE 1984 WILL AUTOMATICALLY EXPIRE

This application with the appropriate remittance should be lodged at the company's principal share registry

CAPITAL SHARE REGISTRY PTY LTD
15TH FLOOR,
200 ST. GEORGE'S TERRACE,
PERTH, W.A. 6000

REGISTRAR
SUPREME COURT OF WESTERN AUSTRALIA

Document 3 - Affidavit of Michael John Evans sworn 10.5.1984 and Exhibits thereto being: "E" - Sample of Option Certificate of Forsayth Oil & Gas NL;

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

Company No. of 1984

FORSAYTH OIL & GAS N.L.

Plaintiff

and

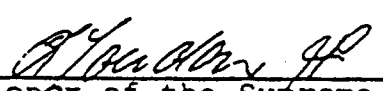
LIVIA PTY. LTD.

Defendant

This is the exhibit marked
with the letter "F" referred
to in the affidavit of

MICHAEL JOHN EVANS
sworn the *10th* day of *MAY*
1984. Before me:

10


A Commissioner of the Supreme
Court of Western Australia for
taking affidavits/A Justice of
the Peace

T. LOUDON

JUSTICE OF THE PEACE
WESTERN AUSTRALIA

MUIR WILLIAMS NICHOLSON
SOLICITORS
9TH FLOOR
AUSTMARK CENTRE
15-17 WILLIAM STREET
PERTH W.A. 6000

20

Tel. 327.5777

Ref. KW

KW25

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984 and
Exhibits thereto being: "F" - Copy
letter Livia Pty Ltd to Forsayth
Oil & Gas NL:3.5.1984.

25

25

LIVIA PTY. LTD.
21 Howard Street,
PERTH WA 6000

3rd May, 1984

The Directors,
Forsayth Oil & Gas N.L.,
Griffin Centre
The Esplanade
PERTH WA 6000

URGENT

Attention: Mr. M. Evans

10

Dear Sirs,

1st June '84 Options

I refer to our recent telephone conversation when I agreed to see you yesterday afternoon, which appointment you subsequently cancelled.

I confirm that Livia has not accepted the offer made to holders of June 84 options and that it requires registration of the transfers to it of the 1,272,170 June '84 options for which certificates were forwarded to you.

I note that you have already taken legal advice in this matter. Therefore kindly advise by return mail whether you intend to register those transfers or not, and if not why not. 20.

Unless Livia receives by noon tomorrow your Company's written assurance that the transfers will be registered by 10th May, 1984 and unless those transfers are so registered this Company will take legal action without any further reference to you whatever.

Yours faithfully,


JOHN COCHRANE

Director

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984 and
Exhibits thereto being: "F" - 30
Copy letter Livia Pty Ltd to Forsayth
Oil & Gas NL: 3.5.1984.

26

26

RECEIVED

17 MAY 1984

Ans'd.....

LIVIA PTY LTD
21 Howard Street
PERTH WA 6000

7 May 1984

URGENT

The Directors
Forsayth Oil & Gas NL
Griffin Centre
The Esplanade
PERTH WA 6000

10

Attention: Mr M Evans

Dear Sirs

Re: 1st June '84 Options

Having received no response to my letter of the 3 May (which is a surprising attitude for a listed Public Company), Livia is proceeding to institute the legal action foreshadowed.


Both the Stock Exchange Listing requirements and the relevant provisions of the Company's Code require that you properly register all option holders, and failure to do so is an offence which renders both the Company and any participating Director or officer liable to prosecution. Your Company's obligations are to properly register holders of all outstanding options. Your register should record the holders of both options to acquire fully paid \$1.00 shares on payment of 25¢ prior to the 1 June 1984, and options to acquire fully paid 25¢ shares on payment of 20¢ prior to the 31 December 1985. (14)

20

I confirm that Livia has not accepted the current offer to exchange its '84 options for '85 options, and currently intends to exercise its options which as you are aware expire on the 1 June 1984. You have therefore now been put on notice as to this fact, and Livia requires that you take all and any necessary steps to ensure that it is not prejudiced or hindered in this regard, by effecting due registration and delivering a certificate with respect to these options, and also ensuring that the Company is in a position to issue the requisite shares to Livia in due course.

30

Yours faithfully


JOHN COCHRANE
Director

Document 3 - Affidavit of Michael
John Evans sworn 10.5.1984 and
Exhibits thereto being: "G"-Copy Letter
Livia Pty Ltd to Forsayth

28 28

M10A. 11.15

MR WHITE (Continuing): - - - to be cross-examined.

FRANKLYN J: Do you require Mr Evans called, Mr Malcolm?

MR MALCOLM: Yes, your Honour.

FRANKLYN J: Thank you, Mr White.

MICHAEL JOHN EVANS, sworn:

CROSS-EXAMINED BY MR MALCOLM QC:

MR MALCOLM: Mr Evans, there are one or two matters that I would like to ask you about. I would like to make it clear from the outset that the purpose is to elicit information, and not to challenge anything that you have put on oath to date. Mr Evans, I understand you were appointed a director of Forsayth Oil & Gas No Liability on the 3rd of May 1983. Is that correct?---I believe it was the 5th of May, but I would need to check. 10

In all events, it was a date after the special resolutions were passed on the 15th of March 1983 and shortly prior to the approval by the Supreme Court of New South Wales of the reduction of capital?---That's correct. 20

Prior to your appointment as a director, had you had any connection with the company as an employee?---No.

Prior to your appointment as a director, had you any connection with the company in any other capacity?---I was the director of a company called Ferrovanadium, which was a shareholder in Forsayth Oil & Gas. That was my substantial connection with Forsayth.

It was the fact, was it not, that as at the 15th of March 1983, at the time of the special resolutions, ordinary shares in the company were listed on the Australian Associated Stock Exchanges?---That's correct. 30

That has been the position in relation to the shares of the company at all material times since?---Yes.

As at the 15th of March 1983 the options which were outstanding for shares in the company were known as June 1984 options?---Correct.

As at the 15th of March 1983 those options were also listed and traded on the Australian Associated Stock Exchanges? ---They were listed. However, they were not traded. They had no value. 40

Is it the fact that at all material times since the 15th of March 1983 the June 1984 options were listed, until shortly

after the Supreme Court of New South Wales approved
the reduction in capital?---They were listed.

MR MALCOLM: Is it the fact that the capital of the company
was increased - - -

Document 4 - Cross Examination of
Michael John Evans:6.8.1984.

BG
Coy 56,114/84

30

30₂₁

M.J. EVANS, JCN

6.8.84

MR MALCOLM (Continuing): - - - increased from \$50 million to \$200 million by the creation of an additional 150 million ordinary shares of \$1 each on 28th August, 1980?---I would need to check my records to answer that question.

Perhaps I could show you a document which will assist you in relation to that. Would you have a look at that document? I think the first page of that letter gives you the date, does it not?---Yes - 28th August, 1980. 10

Would you agree that, as at 30th June 1980, there were 12,159,065 June 1984 options outstanding?---Once again I would have to check my records to be able to confirm that.

I will show you another document and ask you whether, on looking at that, you can confirm that that is the case. The information to which I refer is contained on the second page of the document?---Right. Can you repeat your question, please?

Yes - whether there were 12,159,065 June 1984 options outstanding as at 30th June 1980? The information is on the second page of the document that I have shown you? ---Yes. The figure 12,159,065 does appear on the document against the word "options." 20

Yes; and as of 30th June 1980, which is the date of the document itself? You have the page - the page you were looking at - the second page?---Yes.

FRANKLYN J: What is the document?

MR MALCOLM: The document is an application by Forsayth Oil & Gas N.L. to the stock exchange for a listing of some shares which were proposed to be issued. 30

WITNESS: The reason for the confusion was that the page you showed me had four million options on it.

FRANKLYN J: But Mr Evans, do you know as a fact that that is the case? I mean, have you any knowledge of that document?---No, I do not have any knowledge of that document.

All you are agreeing to is that there is a document presented to you which purports to be an application?---Yes, your Honour. 40

MR MALCOLM: You told me that you had records which would enable you to say whether or not it was the fact that 12,159,065 options were outstanding at 30th June. What records do you have that would enable

you to say whether that was the case?---In the normal course of a question like that, I would refer to our corporate files and look up the stock exchange file to see what the figure was.

MR MALCOLM: Are you content to accept that document as submitted to the stock exchange by the company as setting out the position as at that date?---Well, I have no reason - -

FRANKLYN J: Mr Malcolm, does this witness know that that document was submitted to the stock exchange? Is it common ground? 10

MR MALCOLM: Your Honour, I do not know that there is any dispute about this fact.

FRANKLYN J: I do not, either. That is the only problem I am faced with

MR WHITE: I have no instructions on this point at all, sir.

MR MALCOLM: It would be difficult for your Honour to find any witness who could say, "I recollect that that is the case. It is a matter of record.

FRANKLYN J: I appreciate that, but I do not know - and this witness does not seem to know - the source of this document. It has not been put to him, anyway. 20

MR MALCOLM: Mr Evans, is the document to which I have referred you a copy of an application by Forsayth Oil & Gas N.L. to the Stock Exchange of Perth for the listing of certain shares bearing date 30th June 1980 and under the seal of the company?---Once again, the only way I could verify that would be to compare it with my records that I have in the office. I have no reason to believe that it is not.

I will tender it, your Honour. 30

FRANKLYN J: Tender it as what?

MR MALCOLM: If the witness wishes the opportunity to compare his file copy with our photocopy of the original of the stock exchange, I am perfectly happy for him to do that, your Honour. May I give you this document?

FRANKLYN J: What do I accept it as? You see, there is no evidence that it is an original of the stock exchange or a photocopy of the original of the stock exchange; you informed me of that. If Mr White agrees I am quite happy to admit it as such. At this stage you are tendering me a document headed something, not 40

Document 4 - Cross Examination of Michael John Evans:6.8.1984.

EC
Coy56,114/84

23
(Continued on page 23A)

M.J.EVANS, XXN

6.6.84

identified by this witness and asking me to accept it into evidence.

MR MALCOLM: Your Honour, I am asking him to accept it as a photocopy of a share application made. He says, "If I have access to records I can verify that."

FRANKLYN J: Well, maybe it should be marked for identification. I do not see how it can be an exhibit at this stage; it is not identified until he compares it with his records.

MR MALCOLM: Perhaps he should be given that opportunity, your Honour.

10

FRANKLYN J: Well, I am in the hands of counsel.

MR MALCOLM: Yes. I should like him to be given that opportunity.

MR WHITE: As I mentioned, your Honour, I have no instructions but I do know that this witness has received a letter which says what the position was at the time of the capital reconstruction of the company. This witness, of course, only joined the company in 1984 but he would have access to all the records but I am not quite sure of the relevance of the position as at 30th June, 1980. We accept that there were outstanding options running into millions but whether it was 12,159,065 or some other figure I have no idea.

20

FRANKLYN J: Is it a matter that is capable of being agreed?

MR WHITE: I would have thought so, your Honour. It probably is.

MR MALCOLM: If my learned friend is prepared to accept that there were outstanding options running into millions, I would be content with that, your Honour - and I withdraw the tender.

FRANKLYN J: That is as at 30th June, Mr White?

MR WHITE: Yes. Perhaps the witness could just confirm that. I am looking at a letter which is not in the records which refers to that but perhaps this witness could just be asked simply were there outstanding options running into millions at that time.

30

MR MALCOLM: I am content to ask that question, your Honour.
TO WITNESS: Mr Evans, are you in a position to confirm that there were outstanding options numbering some millions exercisable in June 1984 outstanding as at 30th June 1980 - - -

EC
Coy56,114/84

23A

MR MALCOLM QC
MR WHITE
(M.J.EVANS,XXN)

6.8.84

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33

33

Document 4 - Cross Examination of Michael
John Evans:6.8.1984

MR MALCOLM (Continuing): - - - June 1980?---I'm aware of the existence of June 1984 options and the fact that there were several million of them. I'm not sure as to the date. I can confirm that those options did exist prior to the reconstruction, but I don't know about that particular date that you're referring to.

What I want to establish is this: As at the 28th of August 1980, when the capital was increased from \$50 million to \$200 million, there were June 1984 options outstanding 10 running to some millions?---I would need to check my records to answer that question.

What records would you need to check?---The corporate records of the company.

Could I show you a copy of document No.2 in the book of documents, which is the notice of meeting for the 15th of March 1984? Can you tell his Honour whether you attended the meeting on the 15th of March 1983? ---Yes, I was in attendance.

Can you tell his Honour whether or not any meetings of any 20 of the creditors of the company were held in connection with the reduction of capital?---To my knowledge there were no meetings regarding the creditors.

Can you tell his Honour whether or not there were any meetings of option holders held at the time of the reduction of capital?---To my knowledge there were no meetings of option holders held at the time of the reduction of capital.

Did Ferrovanadium hold any options?---I would have to check my records. 30

Could you turn up in those papers what I think is the next document, No.3 in the bundle, which is a notice relating to recall of certificates?---Yes.

Could you confirm that notices in this form went out after the approval by the Supreme Court of New South Wales of the reduction of capital, and while you were a director of the company?---Yes, I can confirm that.

My instructions are that, although these notices were addressed to "Dear Shareholder", notices in that form were sent to option holders?---What are you asking me? 40

Do you agree?---Based on the document in front of me, yes.

Can you point to any form of notice that was addressed specifically to option holders - - -

71. 11.32

MR MALCOLM (Continuing): - - - option holders? Are you aware of any such form of notice?---I would believe that all the option holders would have received this particular correspondence.

I would simply mention, your Honour, that that is an invitation to exchange old options for new options.

FRANKLYN J: Is it important that I read this at this stage?

MR MALCOLM: No, your Honour.

TO WITNESS: May we take it that some option holders accepted the invitation to seek an exchange and some not?---We have had no refusals as such but, I think, the figures are to date that 62 million options out of a total possible 70-odd million were taken up by option holders because it was a very lucrative scheme offered to them.

10

I think you told us earlier that the new options were subsequently listed on the stock exchange. Is that right?---Subject to the confirmation by the Supreme Court of New South Wales, yes.

20

Were any steps taken to de-list the old options?---That is a matter for the stock exchange. They were the party that chose to quote the new options.

FRANKLYN J: What is your answer to the question: That they continued to be quoted, were they - the old options? ---No, they were not quoted.

Maybe you had better take that again?

MR MALCOLM: Yes, sir.

TO WITNESS: Did the company take any steps to procure the stock exchange to de-list the old options?---No.

30

Was it the position that they remained on the list but they were simply not quoted?---I think that someone from the stock exchange would be competent in answering that question.

You do not have any knowledge of that?---No.

Are you aware that an application for an expedited hearing of this matter was made by your company's solicitors? ---Yes, I am.

And are you aware that an affidavit in support of that application was sworn by a Mr Paul Domenic Evans on 21st June 1984? ---Yes.

40

By consent, your Honour, that affidavit may be treated as in evidence in these proceedings.

FRANKLYN J: Do you wish me to read that now or are you just - -

MR MALCOLM: No, your Honour. I will simply refer the witness to one aspect of it.

TO WITNESS: In that affidavit, para.6, it is stated that fully paid 25 cents shares in the capital of the plaintiff are currently being traded on the stock exchange of Melbourne and the Sydney Stock Exchange for approximately 47 cents per share. Was that the market price at that time?--Correct, yes.

What is the current market price of the 25 cent shares fully paid?--On Friday they closed a 45 bid, 50 sell, last sale about 48. 10

Would you agree that - - -

MR MALCOLM (Continuing): - - - agree that there has been a significant increase in the price of the 25 cent shares since early 1983 as a result of a gold discovery by the company?---Yes, I would.

Would that be the main reason for the increase in the price of the shares?---I suspect that is the main reason for the increase in the price.

Would you look at the document which I now show you, and tell his Honour whether or not upon Livia Pty Ltd seeking to register transfers in its favour of June 1984 options, the document now in front of you dated 28th My 1984 is the certificate which was issued by Forsayth to Livia relating to 127,217 new options?---Yes. 10

I tender that certificate, your Honour, which is dated 28th May 1984 in photocopy with the consent of my learned friend.

MR WHITE: No objection, your Honour.

EXHIBIT EXHIBIT 2 Certificate dated 26.5.1984.

FRANKLYN J: Do you think the affidavit of Paul Domenic Evans should be admitted as an exhibit? 20

MR MALCOLM: If agreed that it is treated as evidence before your Honour in these proceedings that, I would submit, would be sufficient.

FRANKLYN J: Very well.

MR WHITE: I have no objection, your Honour.

MR MALCOLM: Incidentally, Mr Evans, is Capital Share Registry Pty Ltd the company which operates the principal share registry of Forsayth?---That is correct.

At least since the beginning of April 1984, has the office of Capital Share Registry Pty Ltd been at 17th floor, 111 St Georges Terrace, Perth?---Yes. 30

It was formerly at 15th floor, 200 St Georges Terrace, Perth. Is that right?---I believe so.

Do you still have that bundle of documents in front of you that I showed you earlier?---Which is?

Exhibit 1?---I have a bundle of documents.

FRANKLYN J: I do not know that the witness has the bundle, exhibit 1.

MR MALCOLM: He has a bundle, which is a copy, your Honour.

TO WITNESS: Could you turn up what is item 6 in the 40

bundle and it is a letter from Livia to Forsayth dated 30th May 1984, exercising the options?---I am sorry, who was the letter between?

MR MALCOLM: The letter was from Livia to Forsayth dated 30th May 1984, exercising the options?---I do not have a copy of that letter.

If you would hand me the bundle, I will see if I can locate it for you. Thank you. It seems to be omitted from this set. I will show you a copy of that letter - - -

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EC
Coy56,114/84

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M.J.EVANS, XXN

6.8.84

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Document 4 - Cross examination of
Michael John Evans: 6.8.1984

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MR MALCOLM (Continuing): - - - of that letter. Do you recall that letter was accompanied by bank cheques totalling \$318,042.50, being the application allotment moneys due on the exercise of those options, on the basis that they were June 1984 options for \$1 shares?---Can you repeat the question, please?

Do you recall that the letter of application was accompanied by bank cheques totalling \$318,042.50?---Yes.

Do you accept that that was the correct sum of money, on the basis that the options to be exercised were June 1984 options for \$1 shares in the company?---Yes.

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Thank you, Mr Evans.

WITNESS WITHDREW

MR WHITE: That is the case for the plaintiff, your Honour.

FRANKLYN J: Thank you, Mr White.

Mr Malcolm?

MR MALCOLM: If your Honour pleases, there are a number of points in my learned friend's submissions with which we are in agreement. We would accept that when an option holder took out an option to acquire \$1 shares in the capital of the company as fully paid shares for an exercise price of 25 cents per share, he took the risk that between the time of the grant of the option and the date of exercise the company might either reduce or increase its capital, or that it might in the intervening period even go into liquidation. What we do not accept is that simply by inserting into the option contract, as evidenced by the option certificate, a provision that the option is subject to the memorandum and articles of association it follows that the company reserved to itself unilaterally to vary the subject matter of the contract, the exercise price payable, and the date by which the option was to be exercised.

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In our submission, each of those features, together with all other features of the contract, remained intact, notwithstanding any increase in the capital of the company or any decrease in the capital of the company.

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The authorities to which my learned friend referred in this respect quite rightly stand for certain propositions. Number 1 of his list of authorities, Archibald Bowie Pty Ltd and Others v. The Commissioner of Stamp Duties New South Wales, 1948 77 CLR 143, stands for the proposition that a share is an aliquot or proportionate part of the capital of the company. It

REGISTRAR *Mog*
SUPREME COURT OF WESTERN AUSTRALIA

IN THE SUPREME COURT)
OF WESTERN AUSTRALIA)

No 2252 of 1984

(Formerly Company No 56 of 1984)

B E T W E E N :

FORSAYTH OIL & GAS NL

Plaintiff

- and -

LIVIA PTY LTD

Defendant

No 2253 of 1984

(Formerly Company No 114 of 1984) 10

B E T W E E N :

LIVIA PTY LTD

Plaintiff

- and -

FORSAYTH OIL & GAS NL

Defendant

(CONSOLIDATED BY ORDER DATED THE 6TH DAY OF AUGUST 1984)

BEFORE THE HONOURABLE MR JUSTICE FRANKLYN
IN CHAMBERS THE 17TH DAY OF SEPTEMBER 1984

UPON THE APPLICATION of FORSAYTH OIL & GAS NL as Plaintiff
by Originating Summons dated the 10th day of May 1984 AND 20
UPON THE APPLICATION of LIVIA PTY LTD as Plaintiff by
Originating Summons dated the 3rd day of August 1984 and upon
hearing Counsel for the parties IT IS DECLARED AND ORDERED THAT:

1. On Originating Summons No 2253 of 1984 :

- (1) Upon the registration of transfers to it of
1,272,170 options for \$1.00 fully paid shares
in FORSAYTH OIL & GAS NL, at an exercise price
of 25 cents, LIVIA PTY LTD was entitled to be
issued with an option certificate in its name
certifying that it was the registered holder of

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1,272,170 options for \$1.00 fully paid shares in
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Supreme Court of Western Australia
404() 17 9 1984

the said FORSAYTH OIL & GAS NL at an exercise price of 25 cents.

- (2) Upon the exercise by LIVIA PTY LTD, as it did on 30th May 1984 of the aforesaid 1,272,170 options for \$1.00 fully paid shares in FORSAYTH OIL & GAS NL at an exercise price of 25 cents, LIVIA PTY LTD was entitled to be issued with 1,272,170 \$1.00 fully paid shares in the capital of the aforesaid FORSAYTH OIL & GAS NL and the said FORSAYTH OIL & GAS NL was liable to take such steps as may be necessary to issue such shares to the said LIVIA PTY LTD including the calling of any necessary general meetings of the said FORSAYTH OIL & GAS NL and using it's best endeavours to procure the passage of such resolutions as may be necessary to enable such shares to be issued to the said LIVIA PTY LTD.

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2. Originating Summons No 2252 of 1984 be and is hereby dismissed.
3. FORSAYTH OIL & GAS NL do pay the costs of LIVIA PTY LTD of the consolidated proceedings to be taxed as one set of costs without regard to the upper limits of the scale with a certificate for second Counsel.
4. There be liberty to apply.

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BY THE COURT



DEPUTY REGISTRAR

THIS ORDER was extracted by Messrs Downing & Downing of
21 Howard Street, Perth WA 6000 TEL: 3223355
REF: MES:DCD

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Supreme Court of Western Australia:
17.9.1984

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IN THE SUPREME COURT)
)
OF WESTERN AUSTRALIA)

Heard: 6th August, 1984

Delivered: 17th September, 1984

IN CHAMBERS

Coy. No. 56 of 1984

B E T W E E N:

FORSAYTH OIL & GAS N.L.
Plaintiff

-and-

LIVIA PTY. LTD.
Defendant

CONSOLIDATED WITH

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Coy. No. 114 of 1984

B E T W E E N:

LIVIA PTY. LTD.
Plaintiff

-and-

FORSAYTH OIL & GAS N.L.
Defendant

Mr. K. White and Mr. P. Evans, instructed by
Messrs. Muir Williams Nicholson, appeared for
Forsayth.

Mr. D.K. Malcolm, Q.C., with him Ms. M.E. Scanlon,
instructed by Messrs. Downing & Downing, appeared
for the Livia.

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Cases referred to in Judgment:

Archibald Howie Pty. Ltd. v. Commissioner of Stamp
Duties (N.S.W.), (1948) 77 C.L.R. 143
Hirsch & Co. v. Burns & Anor., (1897) 77 L.T. 377

Cases also cited:

In re Credit Assurance & Guarantee Corporation Ltd.,
(1902) 2 Ch. 601
In re Barrow Haematite Steel Co., (1888) 39 Ch.D. 582 30
Bannatyne v. Direct Spanish Telegraph Co., (1887) 34 Ch.D. 287
Ballas v. Theophilos, (1957) 98 C.L.R. 193
Goldsbrough Mort & Co. Ltd. v. Quinn, (1910) 10 C.L.R. 674
Carter v. Hyde, (1923) 33 C.L.R. 115
Wright v. Dean, (1874) L.R. 7 H.L. 158
In re Compania de Electricidad de la Provincia de Buenos Aires
Ltd., (1980) 1 Ch. 146
In re Leichardt Exploration Ltd., Supreme Court S.A.
(Unreported) Master Lunn Q.C., 22nd May 1984
Northern Counties Securities Ltd. v. Jackson & Steeple Ltd., 40
(1974) 1 W.L.R. 1133
Boomalli Ltd. v. Hack, (1982) 7 A.C.L.R. 516
42 112 Document 6 - Reasons for Judgment of
The Honourable Mr Justice Franklyn:
17.9.1984

FRANKLYN J.

These actions were heard together as a result of a consolidation order made the 6th day of August, 1984. Forsayth Oil & Gas N.L. (Forsayth) is a public no liability company which, prior to 15th March 1983, had a nominal capital of \$200,000,000 divided into 200,000,000 shares of \$1 each. A specified number of those shares had been issued and the plaintiff had granted options to take up additional ordinary \$1 shares in its unissued capital. As at 15th March 1983, the issued ordinary shares were listed on the Australian Associated Stock Exchanges and had a market value of two cents each. Each such option granted to the holder thereof the right on application and payment of a discount price of 25c made prior to 1st June 1984. to take one fully paid \$1.00 share in the company. The said options were transferable at any time prior to 1st June 1984. Such options were known as "June 1984 Options" and as at 15th March 1983, were also listed on the Australian Stock Exchanges but were not traded being then of no value. Option certificates were issued by Forsayth to the holders of these options certifying as follows: 20

"THIS IS TO CERTIFY that the abovenamed is the registered holder, subject to the Memorandum and Articles of Association of the Company, of the undernoted options over fully paid shares of \$1.00 each subject to the conditions overleaf."

The conditions overleaf set out the requirements for exercise of each option and for transfer of the option.

By Notice of Meeting dated 3rd February 1983 addressed to its shareholders, Forsayth advised of the annual general meeting to be held on 15th March 1983, and of certain 30

"additional ordinary and special resolutions" to be considered and, if thought fit, passed at the meeting. The special resolutions referred to were directed to a restructuring of the capital of the company and were to achieve a reduction of capital having the effect of writing off capital lost and not rerepresented by available assets. The special resolutions were numbered in the Notice as is set out hereunder and were to the following effect:

- (4) Subject to the confirmation of the Supreme Court of New South Wales pursuant to s. 123(i) of the Companies (New South Wales) Code, to reduce the share capital from \$200,000,000 divided into 200,000,000 \$1 shares to \$20,000,000 divided into 80,000,000 25 cent shares. 10
- (5) Subject to the passing of such last mentioned resolution to amend the Memorandum of Association to provide for such reduction aforesaid.
- (6) Subject to the passing of such resolutions aforesaid and to the confirmation of the Supreme Court and pursuant to Articles 34 and 35 of the Articles of the Company and s. 123 of the Code, to reduce the paid-up capital from \$127,129,644.36 (comprising 112,389,727 fully paid shares of \$1 each; 3,148,015 contributing shares of \$1 paid to 62 cents each and 21,313,577 contributing shares of \$1 paid to 60 cents and forfeited through non-payment of calls) to \$3,179,815.13 (comprising 11,238,973 fully paid shares of 25 cents each, 314,802 contributing shares of 25 cents paid to 16 cents each, and 2,131,358 contributing shares of 25 cents paid to 15 cents each and forfeited through non-payment of calls) by cancelling the sum of \$123,949,829.23 paid-up capital lost and unrepresented by available assets to the extent of 0.975 cents per share on each of the fully paid shares, 0.604 cents per share on each of the partly paid shares and 0.585 cents per share on each of the forfeited shares. 20 30 40

The ordinary resolutions proposed in the notice were directed, as to resolution numbered "(7)", to authorising the directors to transfer the incorporation of the company to

Western Australia; as to resolution numbered "(8)", to authorising the directors to place at their discretion within three months of the approval by the Supreme Court of New South Wales of the special resolutions numbered (4), (5) and (6) referred to above 5,000,000 fully paid 25 cent shares and 5,000,000 options to subscribe for fully paid 25c shares exercisable at 20c each on or before the 31st December 1985. Resolution (9) was in the following terms:

"Subject to the passing of Resolutions (4), (5), (6) and (8) set out above, that the holders of options granted by the company to purchase fully paid \$1.00 shares in the company on or before 1st June 1984 at an exercise price of 25 cents be offered one option to acquire one fully paid 25 cent share exercisable on or before the 31st December 1985 at an exercise price of 20 cents per option for every ten options currently held and where as a result of the foregoing any option holder becomes entitled to a fraction of an option to acquire a fully paid 25 cent share such option holder receive one option exercisable on or before the 31st December 1985 at an exercise price of 20 cents to purchase a fully paid share in respect of that fraction."

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In the body of the Notice of Meeting the shareholders were advised that they would be asked "to authorise the company to offer option holders a new option in lieu of those presently held". The Notice went on to identify the options to be offered which were those the subject of ordinary resolution (9) set out above.

The annual general meeting was duly held on 15th March 1983, and each of the aforesaid special and ordinary resolutions was passed. The capital reduction provided for by the special resolution was confirmed by the Supreme Court of New South Wales on 16th March 1983. Making its order, the Court also ordered that "all of the provisions of s. 123(3) of the Companies (N.S.W.) Code shall not apply in respect of all

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creditors of the plaintiff company", an order clearly made pursuant to s. 123(4) of the Code "having regard to the special circumstances of the case". No evidence or information was adduced as to what were the special circumstances in respect of the order nor as to whether or not the Court was advised of the ordinary resolutions passed or as to the existence of the June 1984 options. Mr. Michael John Evans, a director of Forsayth, gave evidence under cross-examination that no meetings of creditors were held in relation to the reduction nor was any meeting of option holders held at the time of the reduction. 10

On a date or dates not specified, Forsayth then issued to its shareholders a document entitled "Recall of Certificates" advising the effect of the reduction of capital upon the issued shares and notifying approval thereof by the Court, and requesting return of share certificates to be exchanged for new shares to be issued pursuant to the capital reduction and reconstruction. Mr. Evans, stated that in his belief a copy of this document would have been issued to the holders of the June 1984 options. The document referred to those options in 20 the following terms:

"In addition the holders of options to purchase one fully paid \$1.00 share in the company on or before June 1 1984, at an exercise price of 25 cents per option are hereby offered one option, for every ten options currently held, to purchase one fully paid 25 cent share exercisable on or before December 31 1985 at an exercise price of 20 cents per option."

There is no evidence of any other advice as to the resolutions or any of them being sent to the option holders. 30 Mr. Evans, in answer to a question as to whether some option holders "accepted the invitation to seek an exchange",

answered: "We have had no refusals as such but I think the figures are to date that 62 million options out of a total possible 70-odd million were taken up by option holders because it was a very lucrative scheme offered to them" (T/s.26). His evidence was that the new options were listed for trading on the Stock Exchange but that Forsayth took no steps to cause the June 1984 options to be delisted as they were not being quoted and he believed it was a matter for the Stock Exchange to delist them. He had no knowledge as to what had transpired in that regard. 10

By a letter to Forsayth dated 13th April 1984, Livia Pty. Ltd. (Livia) forwarded documentation for the transfer to it of 1,272,170 June 1984 options over unissued \$1 shares in Forsayth and requested registration thereof and the issue to it of certificates in respect thereof. Forsayth replied by letter dated 9th May 1984, that it was attending to have Livia registered as the transferee of "the relevant options", advising of its new capital structure, stating that "each option holder is now entitled to take up 1 x 25c share at a cost of 20c for each 10 x \$1.00 shares which it was entitled 20 to take up at a cost of 25c each, prior to the reduction in capital", and advising that it intended to seek a declaration from the Court. On or about 29th May 1984, Forsayth forwarded to Livia a certificate certifying Livia to be "the registered holder subject to the Memorandum and Articles of Association of the Company of 127,217 options over fully paid shares of 25 cents each "subject to the conditions overleaf", which conditions provided for exercise of the options at any time prior to 31st December 1985 on payment of 20 cents for each.

new share taken up. By letter dated 30th May 1984, Livia advised that it had never accepted the offer to take up December 1985 options, returned the said certificates and purported to exercise its June 1984 options to take up 1,272,170 shares of \$1 each in the unissued capital of Forsayth, enclosing the sum of \$318,042.50, the total exercise price at 25 cents per share. By letter also dated 30th May 1984 Forsayth by its solicitors notified Livia that it recognised its entitlement to 127,217 options but did not recognise that it had any entitlement "to \$1,272,170 of the unissued share capital of the company":- The letter referred to the reconstruction of the share capital and to the fact that shareholders thereupon became entitled to one 25 cent share for each ten \$1 shares previously held, stated that option holders "are entitled to one option to subscribe for a .25c share at an issue price of .20c in place of 10 options to subscribe for \$1.00 shares at .25c previously held", and advanced that "the latest date for exercise of the option was extended to 31st December 1985". Forsayth undertook in this letter to issue 127,217 25 cent shares to Livia "upon proper exercise of the option", refusing to accept Livia's letter of 30th May and accompanying application for shares "as exercise of the options presently held by Livia".

In action No. 56 of 1984, Forsayth seeks certain declarations as to its rights and liabilities in respect of the June 1984 options. In action No. 114 of 1984, Livia seeks declarations as to its rights in respect of those options. The issue is essentially whether Livia was at the relevant time entitled to exercise the June 1984 options in accordance

with the terms thereof and to receive in respect thereof 1,272,170 fully paid \$1 shares in Forsayth, or whether it was at the relevant time and is until the 31st December 1985 entitled only to exercise options to take up 127,217 fully paid 25 cent shares at an issue price of 20 cents per share.

The case submitted on behalf of Forsayth may be summarised as follows, specific expressions used by counsel appearing within quotation marks:

1. That the June 1984 options were all granted subject to the Memorandum and Articles of Association of the company; that Article 34 of the Articles of Association authorised the company by special resolution inter alia to reduce its share capital and consequently the options were granted and taken subject to the power and right of the company to reduce its share capital. 10
2. When, subsequent to 16th March 1983 (the date of approval of the resolution reducing capital) Livia purported to exercise its option and required the issue to it of 1,272,170 shares of \$1 each, it was acting under the mistaken belief that the par value of a share represents its real or actual value. 20
3. That the words "fully paid shares of \$1 each" appearing in the Certificate of Grant of the options constitute a labelling phrase, a description of the "sorts of shares" but not a description of the monetary value of the shares which at the time were trading at two cents. 30
4. That a share simply represents a proportionate interest in the capital of the company the value of which fluctuates.
5. That the acquisition of an option confers only a right to take up "certain shares" within the agreed time for exercise.
6. That when the June 1984 options were granted each share option was to acquire a 1/200 millionth share in the capital of the company for 25 cents and not to acquire a certain value interest. 40
7. That having acquired a right to acquire subject to the Memorandum and Articles a 1/200 millionth share in the actual capital of the

company Livia now sought, by claiming \$1 shares, to acquire a 1/20 millionth share therein for the same price.

8. That the reduction of share capital represented a 90% reduction in share capital. Thus every ten \$1 shares in the pre-reduced capital was now represented by one 25 cent share in the reduced capital.
9. Option holders took the risk that the share capital might be reduced or the company might go into liquidation, or that nominal capital might be increased and more shares issued. 10
10. The only right of an option holder is to be put into the same position as a holder of the relevant proportion of the company's assets, that is its share capital, at the date of exercise of the option. His right is to acquire the share in the condition in which it happens to be at the date he exercises the option and he cannot before exercising the option interfere with the lawful activities of the company. 20
11. When Livia elected to take up the shares, the shares had been subdivided and the capital had been reduced as a result of the special resolution and order of the Court.
12. Consequently the shareholders were entitled only to one 25 cent share for every ten \$1 shares the subject of the June 1984 options.

This argument leaves unanswered the question, even 30
 assuming that the June 1984 option holders became entitled to only one 25 cent share in respect of the exercise of ten options for \$1 shares in the pre-reduced capital: How is the new exercise price and change of exercise date justified if the option holder becomes entitled to the new option in lieu of the old option by virtue only of the reduction of capital? Further on my understanding of Livia's argument and on the objective facts relating to exercise of the option, it is not fair to say that it believed the par value of a share to represent the real or actual value of that share. It is 40
 also doubtful, but probably of no significance, that a share

option gave a right to acquire a 1/200 millionth interest in the nominal capital of the company as suggested by Forsayth. I would have thought that on exercise thereof the new shareholders would acquire a proportionate interest in the issued capital of the company, that is, its capital as represented by asset backing. I note that counsel for Forsayth, as is apparent from that part of the argument appearing in paras. 3 and 5 above, found difficulty in describing what were the shares (if not a \$1 share) to which a right was conferred by the option and contented himself with using the expressions "sorts of shares" and "a right to take up certain shares" (T/s. p.11), which do little to assist in deciding whether Livia is entitled to \$1 shares or 25 cent shares. The argument further ignores the fact disclosed by the evidence that on the 28th August 1980 Forsayth increased its normal capital from \$50,000,000 to \$200,000 shares of \$1.00 each, so that an option holder's entitlement (on the company's argument) was reduced from 1/50 millionth share to a 1/200 millionth share in the capital, although it seems without variation of the nominal share value. The company it seems saw no inequity in that reduction of value of shares the subject of the option but now complains of inequity because of an increase in value resulting from a reduction in nominal capital.

In granting the June 1984 options Forsayth, for valuable consideration, entered into a contract to sell the subject matter thereof, that is, a \$1 share in the unissued capital of the company in each case, upon condition that the grantee forward to the specified address the application duly

completed together with the discounted purchase price of 25 cents and surrendered its option certificate, all this to be done prior to 1st June 1984. It is not in dispute that the option holder Livia duly complied with such conditions. What Forsayth says is that it is no longer obliged to perform that contract because the option was granted in express terms that the holder thereof was "the registered holder subject to the Memorandum and Articles of Association of the company", and because between the grant and due exercise of the option the company in exercise of powers conferred on it by its Articles of Association reduced and so restructured its capital that instead of a nominal capital of 200,000,000 \$1 shares it now comprised only 80,000,000 25 cent shares. The result is that \$1 shares in its unissued capital no longer exist. One wonders what Forsayth's argument would have been had the capital been reduced to \$20,000 but comprised of a mixed bag of .25 and \$1.00 shares, with \$1.00 shares forming at least part of its unissued capital. Be that as it may Forsayth relevantly now seeks a declaration that its liability to the holders of the June 1984 options to acquire \$1 shares in the company at the price of 25 cents each is "to issue to such holders upon their purporting to exercise an option to acquire \$1 shares in the company, 25 cent shares in the company on the basis that one 25 cent share in the company be issued at a price of 20 cents in respect of every ten options to acquire \$1 shares in the company sought to be exercised". It seeks a further declaration that "the rights conferred upon the holders of options to acquire \$1 shares in the company have been varied by the reduction of capital of the company

effective pursuant to the special resolution of the company on 15th March 1983, so that such holders are entitled to acquire one 25 cent share in the company at a price of 20 cents each for every ten options to acquire \$1 shares in the company which they may hold". It is noted that these proposed declarations make no mention of the new date for exercise of the new options, but they do encapsulate Forsayth's argument that, by virtue of the reduction of the capital of the company, holders of the June 1984 options are entitled to one 25 cent share at a price of 20 cents each for every ten June 1984 options held. The effect of this is that by virtue of the reduction, the subject matter of each June 1984 option is reduced from a \$1 share to a 25 cent share, the exercise price is varied from 25 cents for a \$1 share to 20 cents for a 25 cent share, and the period of exercise of the option is varied from 1st June 1984 to 31st December 1985. It is quite clear that this is not the result of the reduction of capital. The Notice of Meeting being Document 2 in Ex. 1, establishes clearly that the sequence of events was, firstly, a reduction of capital and variation of capital structure by special resolution approved by the Court. This embraced a subdivision and reduction of unissued capital which did not need the approval of the Court (Art. 30 and s. 121 of the Code). Those special resolutions and the approval of the Court were not addressed to the question of the options. It does not follow as a matter of calculation from the subdivision and reduction of capital that each ten options to purchase a \$1 share at 25 cents in the capital of the company prior to reduction is represented proportionately by one option to purchase one 25

cent share at 20 cents. The June 1984 options provided for a total exercise price of \$2.50 for every ten \$1 shares, that is, a purchase price of 25% of the nominal value of the shares. The purported new option said to result from the reduction of capital would produce on exercise one 25 cent share for a price of 20 cents, that is 80% of the nominal value of the share. What the share might, in fact, be worth in either case would depend on market factors, but what is clear is that the June 1984 option holder does not get the benefit of the bargain of a share discounted by 75% in purchase price if he is compelled to take the new option. The exercise price of 20 cents on the new option can in no way be said to result from the reduction of capital but results from a separate ordinary resolution (numbered (9) in the Notice of Meeting) passed the same day conditionally upon the special resolutions as to reduction of capital, consequent amendment of memorandum and capital restructure (represented by resolutions (4), (5) and (6) in the said Notice) being passed and approved by the Court, and conditionally further upon a further ordinary resolution (numbered (8) in the Notice) being passed authorising the directors to place 5,000,000 fully paid shares and 5,000,000 options in the unissued capital of the company at a price of 20 cents by 31st December 1985. It is clear from the wording of such resolution (9) that the reduction and restructuring of capital could be effected without resolution (9) coming into effect and that its effect is entirely unrelated as a matter of construction to the reduction and restructure of capital. However, Forsayth's case goes further. It is its case that the application of the

company's powers under the Memorandum and Articles of Association to reduce and restructure capital has, in any event, deprived the option holders of their right to exercise the option by 1st June 1984 and to acquire a \$1 share on payment of a 25 cent exercise price. The reason for this appears to be because the company no longer has unissued capital in the form of \$1 shares and, further, because the exercise of such option after the reduction and restructure of capital would result in the option holder acquiring a greater interest in the capital of the company by virtue of the 10 shareholding so acquired than that he would have ultimately held had he exercised the option prior to reduction and then, as shareholder, been subject to the effect of the reduction. Forsayth complains that this would give the option holder an unfair advantage and should not be allowed. Forsayth points out that the share capital (nominal) was reduced by 90% from \$200,000,000 to \$20,000,000; that a share represents a proportionate interest in the capital of the company and that as a result it follows that a right to ten \$1 shares must be reduced to a right to only one 25 cent share. One can 20 understand the mathematics to that point, however, no submission was made to justify the fixing of an exercise price for the 25 cent share at 20 cents, being 80% of the nominal value of that share as opposed to the June 1984 option exercise price of 25 cents, being 25% of the nominal value of the \$1 share, nor for the variation of exercise date. The option holder was not a shareholder but a contracting party with the company and in my view had a contractual right, subject to compliance with certain conditions, to acquire a \$1

share, which when issued would entitle him to an aliquot proportion of the company's share capital (Dixon J. : Archibald Howie Pty. Ltd. v. Commissioner of Stamp Duties (New South Wales), (1948) 77 C.L.R. 143, at p. 152. Forsayth relies on dicta in the various judgments in Hirsch & Co. v. Burns & Anor.; (1897) 77 L.T. 377, to support its argument that because the contract was made subject to the Memorandum and Articles it follows that the option holders must accept and cannot successfully protest against the result of the reduction and restructure of capital that no \$1 shares remain forming part of the unissued capital of the company. This argument in my view, is fallacious. It puts the option holder, whose contract is a conditional contract with the company to acquire \$1 shares, in the same position as a shareholder who has entered into a contract intersocios with the other shareholders and the company, and makes the option holder subject to the same contractual liabilities as such shareholders. In my opinion that is not the effect of Hirsch's case which, in any event, can be distinguished on its facts. Hirsch's case was not dealing with the question of an option given for shares of a certain denomination, the liability to issue which was repudiated by the company on the grounds of reduction of capital and subdivision of shares, resulting in the absence of \$1 shares existing in its then reduced nominal capital. It was dealing with a claim for damages based on the incorrect assumption that the option contract could not be fulfilled because the company had gone into liquidation during the period between grant and the due date for exercise of option. The general effect of the principles expressed in

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Hirch's case is that one takes shares subject to the Memorandum and Articles and that an option to take shares does not confer upon the holder thereof, in the absence of express stipulation, a right to have the company abstain from conducting its business in the usual way and exercising all the powers conferred on it in that respect by its Memorandum and Articles. However, the principles so expressed and their application to the facts of that case fall far short of saying that in the exercise of such powers the company is in all cases discharged from contractual liability if such exercise results in it being unable to fulfil the express terms of the contract. Still less do they say that the company can unilaterally substitute terms to replace those which, by its own actions (albeit authorised by its Memorandum and Articles), it has prevented itself from performing. The principles expressed in Hirch's case can be applied to the facts of the present case without doing them any violence. It is entirely unrealistic, however, to extend those principles to say that an exercise of power conferred by the Memorandum and Articles which results in a disability of the company to perform its contractual obligations absolves the company from liability therefor provided the contract contains the magic words "subject to Memorandum and Articles". Such effectively is Forsayth's contention. 10 20

I also point out that s. 131 of the Code provides for a register of options in which, unless the option has been granted official quotation by a Stock Exchange, certain particulars must be entered of options granted to take up unissued shares. The section provides that the register is

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of the Honourable Mr Justice
Franklyn: 17.9.1984

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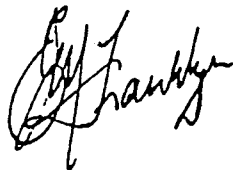
prima facie evidence of any matters inserted therein as required or authorised by the Code. Included amongst the particulars to be entered in the register are the number and description of shares in respect of which an option is granted, the period during which, the time at which, or the occurrence upon the happening of which the option may be exercised, and the consideration for the exercise of the option. If Forsayth's contention is correct that the result of the reduction of capital is that the 1984 options ceased to have effect in their terms, with the consequence that the number and description of shares, and/or, the exercise period, and/or the consideration for exercise are altered, then the evidential effect of s. 131 and the purpose of the register as a public document containing reliable information available to the public becomes most doubtful. There appears to be no power in the Code to amend that register and no procedure to insert therein the consequences said by Forsayth to result from a reduction and restructure of a company's capital. 10

It is of some significance, although of course of itself not determinative, that on the evidence of the contents of its Notice of Meeting, the resolutions, the Recall of Certificates document, and even the fact that it took no steps to cause the June 1984 options to be delisted, Forsayth itself did not demonstrate that it understood the June 1984 contracts to be interpreted in the way now sought, nor that the variation thereof now argued for followed from the reduction of capital. 20

At all relevant times since the reduction of capital Forsayth has had power under its Articles to increase its capital by the creation of new shares of such amount as it

considers expedient and thus it could have created and still can, create sufficient unissued \$1 shares as are required to satisfy the options exercised by Livia. Counsel for Livia has outlined the machinery by which this may be done without offending the rules of the Stock Exchange, which, because of the provisions of s. 42(2) of the Securities Industries Code, is a factor relevant to the making of any declaration.

I find that Forsayth is not entitled to the declarations and orders sought and I dismiss its claim in Action 56 of 1984. I find that Livia is entitled to exercise the June 1984 10 options held by it in the terms thereof and that upon such due exercise is entitled to receive the \$1.00 shares the subject of such options. To give effect to this finding I find that Livia is entitled to the declarations sought by it as plaintiff in the Minute of Declarations filed in Action 114 of 1984 and that judgment should be entered for it therein.



IN THE SUPREME COURT
OF WESTERN AUSTRALIA
THE FULL COURT

Appeal No. ~~44~~⁴³ of 1984
On appeal from Supreme Court

No. 2252 of 1984

(Formerly Company No. 56 of
1984)

B E T W E E N:

FORSAYTH OIL & GAS N.L.

Appellant
(Plaintiff)

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and

LIVIA PTY. LTD.

Respondent
(Defendant)

and

No. 2253 of 1984

(Formerly Company No. 114 of
1984)

B E T W E E N:

FORSAYTH OIL & GAS N.L.

Appellant
(Defendant)

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and

LIVIA PTY. LTD.

Respondent
(Plaintiff)

NOTICE OF APPEAL

TAKE NOTICE that the Full Court of the Supreme Court of
Western Australia will be moved by way of appeal at the
first sittings of the Full Court to be held at the
expiration of eight weeks from the institution of this

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appeal or so soon thereafter as counsel can be heard by
counsel for the appellant for orders:-

1. That the judgment of the Honourable Mr. Justice
Franklyn in originating summons number 2252 of
1984 wherein His Honour dismissed the application
of the appellant (plaintiff) with costs be set
aside and in lieu thereof it be declared that:-

1) The liability of the appellant to the
holders of options granted by the
appellant for the acquisition of \$1.00
shares in the appellant was to issue to
such holders, upon their purporting to
exercise an option to acquire \$1.00
shares in the appellant, 25 cent shares
in the appellant on the basis that one
25 cent share in the appellant be issued
at a price of 20 cents in respect of
every 10 options to acquire \$1.00 shares
in the appellant sought to be exercised.

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2) That the rights conferred upon the
holders of options to acquire \$1.00
shares in the appellant were varied by

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- 2 -

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Document 7 - Notice of
Appeal: 5.10.1984

the reduction of capital of the appellant effected pursuant to the special resolution of the appellant on the 15th March 1983 so that such holders were entitled to acquire one 25 cent share in the company at a price of 20 cents each for every 10 options to acquire \$1.00 shares in the company which they held.

Alternatively that it be declared that the liability of the appellant to the holders of options granted by the appellant for the acquisition of ordinary shares in the appellant was to issue to such holders, upon their purporting to exercise an option to acquire ordinary shares in the appellant, one ordinary share in the appellant at a price of 25 cents each in respect of each option to acquire an ordinary share in the appellant sought to be exercised, whatever the nominal or par value of the ordinary shares in the appellant may be at the time of the exercise of the option.

2. That the rights conferred upon the holders of

options to acquire \$1.00 shares in the appellant were varied by the reduction of capital of the appellant effected pursuant to the special resolution of the appellant on the 15th March 1983 so that such holders were entitled to acquire one 25 cent share in the appellant at a price of 25 cents each for every ten options to acquire a \$1.00 share in the appellant which such option holders held.

Alternatively, that such holders were entitled to acquire one ordinary share in the appellant at a price of 25 cents each for each such option held.

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3. That the judgment of the Honourable Mr. Justice Franklyn in originating summons number 2253 of 1984 wherein His Honour declared:-

(1) Upon the registration of transfers to it of 1,272,170 options for \$1.00 fully paid shares in FORSAYTH OIL & GAS N.L., at an exercise price of 25 cents, LIVIA PTY. LTD. was entitled to be issued with an option certificate in its name certifying that it was the registered

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holder of 1,272,170 options for \$1.00 fully paid shares in the said FORSAYTH OIL & GAS N.L. at an exercise price of 25 cents.

- (2) Upon the exercise by LIVIA PTY. LTD., as it did on 30th May 1984 of the aforesaid 1,272,170 options for \$1.00 fully paid shares in FORSAYTH OIL & GAS N.L. at an exercise price of 25 cents, LIVIA PTY. LTD. was entitled to be issued with 1,272,170 \$1.00 fully paid shares in the capital of the aforesaid FORSAYTH OIL & GAS N.L. and the said FORSAYTH OIL & GAS N.L. was liable to take such steps as may be necessary to issue such shares to the said LIVIA PTY. LTD. including the calling of any necessary general meetings of the said FORSAYTH OIL & GAS N.L. and using its best endeavours to procure the passage of such resolutions as may be necessary to enable such shares to be issued to the said LIVIA PTY. LTD.

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be set aside and in lieu thereof it be ordered that the respondent's (plaintiff's) application be dismissed.

Alternatively that the declaration by the Honourable Mr. Justice Franklyn set out in paragraph (2) of His Honour's order of the 17th September 1984 be varied by the insertion in the fifth line thereof after the word "entitled" of the words "subject to any defences which may be available to FORSAYTH OIL & GAS N.L." so that the declaration reads:- 10

(2) Upon the exercise by LIVIA PTY. LTD., as it did on 30th May 1984 of the aforesaid 1,272,170 options for \$1.00 fully paid shares in FORSAYTH OIL & GAS N.L. at an exercise price of 25 cents, LIVIA PTY. LTD. was entitled subject to any defences which may be available to FORSAYTH OIL & GAS N.L. to be issued with 1,272,170 \$1.00 fully paid shares 20 in the capital of the aforesaid FORSAYTH OIL & GAS N.L. and the said FORSAYTH OIL & GAS N.L. was liable to take such steps

as may be necessary to issue such shares to the said LIVIA PTY. LTD. including the calling of any necessary general meetings of the said FORSAYTH OIL & GAS N.L. and using its best endeavours to procure the passage of such resolutions as may be necessary to enable such shares to be issued to the said LIVIA PTY. LTD.

And that it be ordered that the respondent (defendant) pay the appellant's costs of the consolidated proceedings to be taxed as one set of costs without regard to the upper limits of the scale and with a certificate for second counsel.

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4. The grounds of this appeal are :-

- 1) The learned Judge was wrong in law in holding that, after the reduction of the appellant's capital on the 15th March 1983, the option holders were entitled to be issued with an ordinary share having a nominal or par of \$1.00 in the appellant, at a price of 25 cents a

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share for every option held, more particularly in that ordinary shares of a nominal or par value of \$1.00 in the appellant no longer existed after that date.

- 2) The learned Judge should have held that the rights of the option holders after the reduction of the appellant's capital was to be issued with one 25 cent share for each ten \$1.00 share options as a result of the reduction in capital of the company whereby ten shares of a nominal value of \$1.00 became the equivalent of one share of a nominal value of 25 cents each.

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Alternatively, the subject matter of the options was in each case a number of ordinary shares in the appellant (whatever their nominal or par value might be from time to time) to be acquired upon payment of a price of 25 cents each and the learned Judge should therefore have held that the right of

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the option holders was to acquire one ordinary share of a nominal or par value of 25 cents at a price of 25 cents each for every option on the basis that the appellant had lawfully reduced the nominal or par value of its ordinary shares from \$1.00 each to 25 cents each.

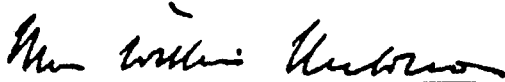
On the hearing of this appeal the appellant will seek the leave of the Full Court to amend its originating summons in No. 2252 of 1984 by adding a new paragraph, marked 2A to follow paragraph 2 thereof and to read as follows:- 10

"2A Alternatively a declaration that, following the reduction of capital of the Company on the 15th March 1983, the holders of options to acquire ordinary shares of a nominal or par value of \$1.00 in the Company were entitled only to acquire one ordinary share of a nominal or par value of 25 cents in 20

the Company for each option at a purchase price of 25 cents each, such option to be exercised prior to the 1st June 1984."

- 3) As it was common cause that questions of specific performance could not be dealt with on the hearing before His Honour and should be preserved, the learned Judge should have rendered the declaration made by him, in paragraph 1(2) of His Honour's orders subject to any defences which may be available to the appellant in respect of any claim for specific performance.

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Solicitors for the Appellant

This NOTICE OF APPEAL was prepared and filed by Messrs Muir Williams Nicholson Solicitors of 9th Floor, Austmark Centre, 15-17 William Street, Perth.

Tel. 327.5777

Ref. KW

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3OCT01

- 10 -

IN THE SUPREME COURT
OF WESTERN AUSTRALIA
THE FULL COURT

Appeal No 443 of 1984
On appeal from Supreme Court
Actions No 2252 of 1984
(Formerly Company No 56 of 1984)
and No 2253 of 1984 (Formerly
Company No 114 of 1984

Consolidated by order dated
6th August 1984

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B E T W E E N :

FORSAYTH OIL & GAS NL

Appellant
(Plaintiff)

- and -

LIVIA PTY LTD

Respondent
(Defendant)

BEFORE THE HONOURABLE MR JUSTICE WALLACE,
THE HONOURABLE MR JUSTICE BRINDEN AND
THE HONOURABLE MR JUSTICE KENNEDY THE
19TH DAY OF DECEMBER 1984

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THIS APPEAL coming on for hearing on the 12th day of
November 1984 and upon reading the Appeal Book filed herein
and upon hearing Mr S P Charles one of Her Majesty's Counsel
with him Mr R J Meadows of Counsel for the Appellant (Plaintiff)
and Mr D K Malcolm one of Her Majesty's Counsel with him
Mr C Zelestis of Counsel for the Respondent (Defendant) and the
Court having ordered that the appeal stand for judgment and the
same standing for judgment this day this Court DOTH ORDER THAT:-

1. The Judgment of the Honourable Mr Justice Franklyn 30
delivered the 17th day of September 1984 be varied
by adding the words "subject to any defences which
may be available to FORSAYTH OIL & GAS NL in respect
of any claim by LIVIA PTY LTD for specific performance,"
after the word "entitled" appearing in line 5 of

Document 8 - Formal Order of the Full
Court of the Supreme Court of Western
Australia on Appeal:19.12.1984

paragraph (2) of the said Judgment, and after the word "liable" appearing in line 9 of paragraph (2) of the said Judgment, so that paragraph (2) now reads :-

" (2) Upon the exercise by LIVIA PTY LTD, as it did on 30th May 1984 of the aforesaid 1,272,170 options for \$1.00 fully paid shares in FORSAYTH OIL & GAS NL at an exercise price of 25 cents, LIVIA PTY LTD was entitled subject to any defences which 10 may be available to FORSAYTH OIL & GAS NL in respect of any claim by LIVIA PTY LTD for specific performance, to be issued with 1,272,170 \$1.00 fully paid shares in the capital of the aforesaid FORSAYTH OIL & GAS NL and the said FORSAYTH OIL & GAS NL was liable subject to any defences which may be available to FORSAYTH OIL & GAS NL in respect of any claim by LIVIA PTY LTD for specific performance, 20 to take such steps as may be necessary to issue such shares to the said LIVIA PTY LTD including the calling of any necessary general meetings of the said FORSAYTH OIL & GAS NL and using it's best endeavours to procure the passage of such resolutions as may be necessary to enable such shares to be issued to the said LIVIA PTY LTD."

2. The Appeal otherwise be and is hereby dismissed.

Document 8 - Formal Order of the Full Court of the Supreme Court of Western Australia on Appeal:19.12.1984

3. The Appellant (Plaintiff) do pay the costs of the Respondent (Defendant) to be taxed with a Certificate for Second Counsel.

BY THE COURT



REGISTRAR

THIS ORDER was extracted by Messrs Downing & Downing of 21 Howard Street, Perth WA 6000 Solicitors for the Respondent (Defendant). TEL: 322 3355 REF: GDR:DCD

IN THE SUPREME COURT)
)
OF WESTERN AUSTRALIA)

Heard: 12th November 1984

Delivered: 19 DEC 1984

THE FULL COURT

CORAM: WALLACE J., BRINSDEN J., KENNEDY J.

Appeal No. 443 of 1984

B E T W E E N :

FORSAYTH OIL & GAS N.L.
Appellant
(Plaintiff)

and

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LIVIA PTY. LTD.
Respondent
(Defendant)

Mr. S.P. Charles Q.C. with him Mr. R.J. Meadows
(instructed by Muir Williams Nicholson) appeared
for the appellant.

Mr. D.K. Malcolm Q.C. with him Mr. C.L. Zelestis
(instructed by Downing & Downing) appeared for the
respondent.

Cases referred to in Judgment:

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Archibald Howie Pty. Ltd. v. Commissioner of Stamp Duties
(1948) 77 C.L.R. 143.

Goldsbrough Mort & Co. Ltd. v. Quinn (1910) 10 C.L.R. 674.

Hirsch & Co. v. Burns & anor. (1897) 77 L.T. 377.

Laybutt v. Amoco (Australia) Pty. Ltd. 132 C.L.R. 57.

Bannatyne v. Direct Spanish Telegraph Co. (1887)
34 Ch.D. 287.

Re Barrow Haematite Steel Co. (1888) 39 Ch.D. 582.

Re Credit Assurance & Guarantee Corp. Ltd. (1902)
2 Ch. 601.

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Codelfa Construction Pty. Ltd. v. State Rail Authority
of N.S.W. 56 A.L.J.R. 459.

B.P. Refinery Pty. Ltd. v. Hastings Shire Council
52 A.L.J.R. 20.

Hilder v. Dexter (1902) A.C. 474.

Neeta (Epping) Pty. Ltd. v. Phillips 131 C.L.R. 286.

Northern Counties Securities Ltd. v. Jackson and Steeple
Ltd. (1974) 1 W.L.R. 1133.

Income Real Estate (Australia) Ltd. v. St. Martins
Investments Pty. Ltd. (1979) 144 C.L.R. 596.

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Cases also cited:

Wright v. Dean (1874) L.R. 7 H.L. 158.
In Re: Compania De Electricidad De La provincia De
Buenos Aires Ltd. (1980) 1 Ch. 146.
Re: Australian Consolidated Industries Ltd. - unreported
S.Ct. Vic. delivered 12th August 1982.
Re: South Eastern Resources Ltd. - unreported
S.Ct. Vic. delivered 19th August 1982.
Re: Golconda Ltd. - unreported St.Ct. Vic.
delivered 3rd February 1983.
Re: International Harvester Credit Corporation Australia 10
Ltd. (1983) 1 A.C.L.C. 700.
Re: Southern Australia Perpetual Forests Ltd.
(1971) V.R. 475.
Re: Glendale Land Development Ltd. (1982) 7 A.C.L.R. 171;
1 A.C.L.C. 540.
In Re: Leichardt Exploration Ltd. - unreported S.Ct. S.A.
Master Lunn QC, delivered 22nd May 1984.
Oakbank Oil Coy. v. Crumb (1882) 8 A.C. 65.
Alexander Mines Ltd. v. Hill (1932) N.Z.L.R. 1599.
Fergusson v. Wilson (1867) L.R. 2 Ch. App. 77. 20

WALLACE J.

This appeal is from a Supreme Court judgment arising out of the hearing of two originating summonses issued by each the appellant and respondent. Therein declarations were sought as to the liability of the appellant company in respect of options granted by the company prior to a capital reconstruction in the month of March 1983. Each option was granted to acquire \$1 ordinary shares at a time when the appellant's only share capital was divided into 200 million ordinary shares of \$1 each. As a result of the appellant's 30 reduction in capital its authorised capital and shareholding consisted of \$20 million divided into 80 million ordinary shares of 25c each. Because of the manner in which the learned trial Judge construed the contract between the parties

evidenced by the granting of the options the judgment appealed from contained declarations, inter. alia, that upon registration of the appropriate transfers and the tendering of the consideration referred to in the options the respondent was entitled to be issued with \$1 fully paid ordinary shares in the appellant's capital. By this appeal the appellant seeks to have substituted for his Honour's declaration an order that the liability of the appellant to the respondent is confined to the issue of the 25¢ ordinary shares in the reconstructed capital of the appellant. The facts are not in dispute.

Prior to 15th March 1983, the appellant had a nominal capital of \$200 million divided into 200 million ordinary shares of \$1 each. As at 15th March 1983, these ordinary shares had a market value of 2¢ each and there were then issued a large number of options of the order of 70 million. The all important option certificate contains on its face the name of the optionee, date and register and thereunder -

" This is to certify that the abovenamed is the registered holder, subject to the Memorandum and Articles of Association of the Company, of the undernoted options over fully paid shares of \$1 each subject to the conditions overleaf. "

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Beneath the above appears the certificate number and the number of options with the share seal of the appellant and the signatures of a director and secretary. On the reverse side of the certificate appears the Application for Shares when the option is exercised in respect of ordinary fully paid shares of \$1 each and thereunder payment at the rate of 25¢ per share - because the options were issued at such a substantial discount. Thereafter there appears the following:

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Document 9 - Reasons for Judgment of the Honourable Mr Justice Wallace, the Honourable Mr Justice Brinsden and the Honourable Mr Justice Kennedy on Appeal: 19.12.1984

" I/We request you allot such shares to me/us and I/We agree to accept them subject to the company's Memorandum and Articles of Association. If this application is signed by an attorney, the attorney hereby declares that he has no notice of revocation of the power under authority of which this application is signed. Companies should sign under Seal."

On the right hand side of the option certificate appears:

" CONDITIONS UPON WHICH THE OPTIONS MAY BE EXERCISED, AND THE EFFECT OF SUCH EXERCISE. 10

Each option may be exercised by forwarding to Capital Share Registry Pty. Ltd. 15th Floor, 200 St. George's Terrace, Perth, W.A. 6000, the application for shares duly completed together with payment of 25 cents (being the application and allotment money for each new share taken up) and surrendering to the company of this certificate. The options may be exercised at any time prior to the 1st June 1984. 20

The option may be transferred by an instrument (duly stamped where necessary) in the form commonly used for transfer of shares at any time prior to the 1st June 1984.

Shares issued on the exercise of options will be allotted after receipt of all relevant documents and payments and will rank equally with the existing ordinary shares of the company.

Applications for listing on the Official Lists of the Stock Exchanges on which the Companies Securities are listed will then be made of the shares then in issue pursuant to this option. 30

NOTE: OPTIONS NOT EXERCISED BY 1ST JUNE 1984 WILL AUTOMATICALLY EXPIRE.

This application with the appropriate remittance should be lodged at the company's principal share registry

CAPITAL SHARE REGISTRY PTY LTD
15TH FLOOR,
200 ST. GEORGE'S TERRACE,
PERTH, W.A. 6000 40

(The underlining is supplied).

By notice of meeting dated 3rd February 1983, addressed to shareholders, the appellant advised that it had expended capital raised on both mineral and petroleum exploration and

Document 9 - Reasons for Judgment of the Honourable Mr Justice Wallace, the Honourable Mr Justice Brinsden and the Honourable Mr Justice Kennedy on Appeal: 19.12.1984

as a result the total share capital on issue "has become disproportionately higher than the asset backing attributable thereto". The directors informed the shareholders of their recommendation that the capital base of the company be restructured so as to have the effect of writing off lost capital not represented by available assets. By way of example, a current holding of 10,000 fully paid \$1 ordinary shares was to be reduced to 1000 fully paid 25c ordinary shares. The notice further sought the authorisation of shareholders to enable an offer to be made to option holders 10 in lieu of that then contained in their certificates. They were to be offered one new option to acquire a fully paid 25c share at an exercise price of 20c per option for every 10 options to acquire \$1 fully paid ordinary shares then held. The meeting of 15th March, 1983 duly passed all resolutions presented, the effect of which was to reduce the paid-up capital of the appellant from \$127,129,644.36 by a factor of 40 to \$3,179,814.13. In addition, the authorisation sought to change the terms of options already granted was given. The effect of all of this was to make clear to shareholders and 20 optionees that in effect for every 10 \$1 ordinary shares each held they would receive one 25c ordinary share as the result of the reducing factor of 40. Thereby each shareholder's aliquot portion of the capital remained the same.

Although listed on the Stock Exchange there was no market for the 70 million options and they were not quoted. Yet 62 million out of that 70 million accepted the appellant's above offer. As previously mentioned the time of the reconstruction the appellant's ordinary shares were trading at 2c so that it

becomes pertinent to note that the effect of the reconstruction was to reduce the value of the ordinary shares to the market level. The endeavour was to treat both shareholder and optionee equally and apart from the respondent's argument with respect to its contract that attempt was successful. On 16th May, 1983 the New South Wales Supreme Court approved the appellant's reduction in capital. The respondent purchased the options now held by it after the appellant's reduction in capital and with knowledge thereof. Its certificate is dated 28th May 1984 and is in terms of the 10 reconstructed offer, entitling the holder to 25¢ ordinary shares.

On 13th April 1984, the respondent's director, J. D. Cochrane, wrote to the appellant seeking the transfer of 1,272,170 options over unissued \$1 ordinary shares in the company to the respondent. The appellant's endeavours to draw the respondent's attention to its restructured capital and therefore the contended reduced effect of the option certificate held by the respondent proved fruitless. Of course, in the meantime the appellant had discovered gold and 20 its ordinary shares were selling at 47¢ on the Stock Exchange. The options acquired by the respondent, if exercised, for a consideration of \$318,042.50 would have resulted in a return of \$2,442,566. Alternatively, it would appear that the respondent would be satisfied by the issue to it of 5,088,680 fully paid ordinary shares of 25¢ each. But this has nothing to do with the manner in which the parties' contract should be construed. Nor, for that matter, the respondent contends, is the fact that if its argument be

correct its shareholding in the appellant will be 40 times greater than that of any other shareholder or optionee prior to the reconstruction.

The appellant contends that such a position was never contemplated as the contractual right of an optionee. We must therefore turn to look at the contract which existed between the appellant and an optionee.

A share in a company is, amongst other things, an aliquot proportion of the company's share capital - Archibald Howie Pty. Ltd. v. Commissioner of Stamp Duties, (1948) 77 C.L.R. 10 143, at p. 152. An option to take up ordinary shares in the company may be described as a contract to issue ordinary shares in the company upon the fulfilment of the conditions of exercise. See Griffith C.J. in Goldsbrough Mort & Co. Ltd. v. Quinn, (1910) 10 C.L.R. 674, at p. 678. A shareholder in a company at all stages holds the share subject to the provisions of the Memorandum and Articles of Association of the company including, in this instance, the power to reduce capital and modify the rights of shareholders by dividing issued ordinary shares into different classes in the manner 20 set forth in Articles 34 and 36 of the appellant's Articles of Association.

Mr. Malcolm accepts that where an option holder took out an option to acquire \$1 ordinary shares in the capital of the company as fully paid ordinary shares for an exercise price of 25¢ per share, he took the risk that between the time of the grant of the option and the date of exercise the company might either reduce or increase its capital, or that in the intervening period it might even go into liquidation. See

Hirsch & Co. v. Burns & Anor., (1897) 77 L.T. 377. What Mr. Malcolm does argue is that it is not possible to unilaterally vary the subject matter of the option contract so as to alter the optionee's entitlement, the price payable for each share and the date upon which the option was to be exercised simply by inserting in the certificate issued a provision that the option was subject to the Memorandum and Articles of Association of the company.

The option certificate does not only certify the holder thereof as being subject to the Memorandum and Articles of Association of the company, but the application for ordinary shares on the reverse side of the document provides for an optionee to take an allotment of ordinary shares subject to the company's Memorandum and Articles of Association. The condition upon which the option may be exercised also set out the effect of such an exercise having taken place. "Ordinary shares issued on the exercise of options will be allotted after receipt of all relevant documents and payments and will rank equally with the existing ordinary shares of the company." (emphasis supplied). In my view the word "existing" refers to the ordinary shares issued upon exercise of the option.

The ordinary shares of the appellant company have at all times been ordinary shares and throughout have ranked equally. The meeting called on 15th March, 1983 was to seek the shareholders' approval of resolutions framed to reduce the appellant's capital to a figure coinciding with the value of its assets. All ordinary shareholders were treated equally as, indeed, were the optionees. The Supreme Court of New

South Wales approved the reduction in capital in full knowledge of the existence of optionees as the notice of meeting discloses. Were it not for the fact that the 8th June 1984 options were not removed from listing in the Stock Exchange and the appellant's discovery of gold, this litigation would never have arisen. But to return to the construction to be placed upon the option contract.

In my opinion the position of optionees prior to the reduction in the appellant's capital vis-a-vis ordinary shareholders was no different to the position which existed 10 subsequent to the resolution for that purpose having been approved. The power to reduce the appellant's capital and subdivide its ordinary shares had been exercised and approved with the result that ordinary shares of \$1 each no longer existed and the right of an optionee who had not exercised his option had been reduced from a right to \$1 ordinary shares at a discount of 75c to a right to one 25c share at a discounted price of 20c for each option to purchase 10 ordinary shares of \$1 each, in the same way as the ordinary share capital had been subdivided. Were one not to so construe the option 20 contract there would be no recognition of the terms subject to the Memorandum and Articles of Association of the company, the effect of the exercise of an option and, therefore, the condition that ordinary shares issued as a result of the exercise of the option to rank equally with the existing ordinary shares of the company. If the respondent's argument be correct, its interest in the capital and voting power in the appellant would represent 13.4% as opposed to an equal ranking entitlement of .38%.

Such a result would be absurd, as Mr. Charles has argued. In my opinion the learned trial Judge was in error when he accepted the contrary argument that the respondent's option entitled it to an issue of \$1 ordinary shares in the terms of the 1984 options. I would allow the appeal and make the declarations sought in paras.1 and 2, on pp.2/3 of the Appeal Book.

THE FULL COURT

CORAM: WALLACE, BRINSDEN & KENNEDY JJ.

Appeal No. 443 of 1984

B E T W E E N :

FORSAYTH OIL & GAS N.L.
Appellant
(Plaintiff)

and

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LIVIA PTY. LTD.
Respondent
(Defendant)

Mr. S.P. Charles Q.C. and Mr. R.J.Meadows
(instructed by Muir Williams Nicholson) appeared
for the appellant.

Mr. D.K. Malcolm Q.C. and Mr. C.L. Zelestis
(instructed by Downing & Downing) appeared for the
respondent.

BRINSDEN J.

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On the 17th September 1984 Franklyn J. pursuant to
originating summons 2253 of 1984 issued by the respondent
and after hearing argument thereon and also after hearing
argument on originating summons 2252 of 1984 issued by the
appellant, the hearing of both originating summonses being
consolidated by order, dismissed originating summons 2252
and made the following declarations and orders in respect of
the other originating summons.

Upon the registration of transfers to it of
1,272,170 options for \$1.00 fully paid
shares in FORSAYTH OIL & GAS NL, at an
exercise price of 25 cents, LIVIA PTY LTD.
was entitled to be issued with an option
certificate in its name certifying that it
was the registered holder of 1,272,170

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options for \$1.00 fully paid shares in the said FORSAYTH OIL & GAS NL at an exercise price of 25 cents.

- (2) Upon the exercise by LIVIA PTY LTD, as it did on 30th May 1984 of the aforesaid 1,272,170 options for \$1.00 fully paid shares in FORSAYTH OIL & GAS NL at an exercise price of 25 cents, LIVIA PTY LTD was entitled to be issued with 1,272,170 \$1.00 fully paid shares in the capital of the aforesaid FORSAYTH OIL & GAS NL and the said FORSAYTH OIL & GAS NL was liable to take such steps as may be necessary to issue such shares to the said LIVIA PTY LTD including the calling of any necessary general meetings of the said FORSAYTH OIL & GAS NL and using its best endeavours to procure the passage of such resolutions as may be necessary to enable such shares to be issued to the said LIVIA PTY LTD. "

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The appellant now appeals against those declarations and the dismissal of its own originating summons. In respect of its own originating it seeks the following declarations:

1. (1) The liability of the appellant to the holders of options granted by the appellant for the acquisition of \$1.00 shares in the appellant was to issue to such holders, upon their purporting to exercise an option to acquire \$1.00 shares in the appellant, 25 cent shares in the appellant on the basis that one 25 cent share in the appellant be issued at a price of 20 cents in respect of every 10 options to acquire \$1.00 shares in the appellant sought to be exercised.
- (2) That the rights conferred upon the holders of options to acquire \$1.00 shares in the appellant were varied by the reduction of capital of the appellant effected pursuant to the special resolution of the appellant on the 15th March 1983 so that such holders were entitled to acquire one 25 cent share in the company at a price of 20 cents each for every 10 options to acquire \$1.00 shares in the company which they held.

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Alternatively that it be declared that the liability of the appellant to the holders of options granted by the appellant for the acquisition of ordinary shares in the appellant was to issue to such holders, upon their purporting to exercise an option to acquire ordinary shares in the appellant,

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one ordinary share in the appellant at a price of 25 cents each in respect of each option to acquire an ordinary share in the appellant sought to be exercised, whatever the nominal or par value of the ordinary shares in the appellant may be at the time of the exercise of the option.

2. That the rights conferred upon the holders of options to acquire \$1.00 shares in the appellant were varied by the reduction of capital of the appellant effected pursuant to the special resolution of the appellant on the 15th March 1983 so that such holders were entitled to acquire one 25 cent share in the appellant at a price of 25 cents each for every ten options to acquire a \$1.00 share in the appellant which such option holders held. 10

Alternatively, that such holders were entitled to acquire one ordinary share in the appellant at a price of 25 cents each for each such option held. 20

In the alternative the appellant seeks the following relief:

- 2A. The learned Judge should have held that the Respondent was not entitled to the declarations sought by it or as made by him on the ground appearing in the preceding grounds of appeal.
- 2B. Having regard to the uncontradicted evidence that the Respondent purchased the Option now held by it after and with knowledge of the reduction in the capital of the Appellant, the learned Judge should have found that there was no contract as between the Appellant and the Respondent whereby the Appellant was required to deliver to the Respondent, upon the options being sought to be exercised, shares having a nominal or par value of \$1.00 in the Appellant. 30 40

The appellant also says that if the declarations made by Franklyn J. are to stand there should be added to the second of the declarations, after the word "entitled" in the sixth line, the words "subject to any defences which may be available to Forsayth Oil and Gas NL". As I understand it, the respondent takes no exception to this addition. The

appellant also added a further claim by leave, namely 3A.

which is in these terms:

" 3A Alternatively, the learned Judge should have found that specific performance was not, in all the circumstances, an appropriate remedy and in consequence should have found that the Respondent's remedy was limited to whatever right it may have in damages (if any) and not to the declarations sought by the Respondent or as made by him. "

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The grounds of the appeal are as follows:

" 1) The learned Judge was wrong in law in holding that, after the reduction of the appellant's capital on the 15th March 1983, the option holders were entitled to be issued with an ordinary share having a nominal or par of \$1.00 in the appellant, at a price of 25 cents a share for every option held; more particularly in that ordinary shares of a nominal or par value of \$1.00 in the appellant no longer existed after that date.

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2) The learned Judge should have held that the rights of the option holders after the reduction of the appellant's capital was to be issued with one 25 cent share for each ten \$1.00 share options as a result of the reduction in capital of the company whereby ten shares of a nominal value of \$1.00 became the equivalent of one share of a nominal value of 25 cents each.

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Alternatively, the subject matter of the options was in each case a number of ordinary shares in the appellant (whatever their nominal or par value might be from time to time) to be acquired upon payment of a price of 25 cents each and the learned Judge should therefore have held that the right of the option holders was to acquire one ordinary share of a nominal or par value of 25 cents at a price of 25 cents each for every option on the basis that the appellant had lawfully reduced the nominal or par value of its ordinary shares from \$1.00 each to 25 cents each.

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On the hearing of this appeal the appellant will seek the leave of the Full Court to amend its originating summons in No. 2252 of 1984 by adding a new paragraph, marked 2A to follow paragraph 2 thereof and to read as follows:-

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2A

Alternatively a declaration that, following the reduction of capital of the Company on the 15th March 1983, the holders of options to acquire ordinary shares of a nominal or par value of \$1.00 in the Company were entitled only to acquire one ordinary share of a nominal or par value of 25 cents in the Company for each option at a purchase price of 25 cents each, such option to be exercised prior to the 1st June 1984.

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- 3) As it was common cause that questions of specific performance could not be dealt with on the hearing before His Honour and should be preserved, the learned Judge should have rendered the declaration made by him in paragraph 1(2) of His Honour's orders subject to any defences which may be available to the appellant in respect of any claim for specific performance. "

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Prior to the 15th March 1983, the appellant, a public liability company, involved in, as the name implies, oil and gas exploration and also in mineral exploration, had a nominal capital of \$200,000,000 divided into 200,000,000 shares of \$1 each. 112,389,727 shares had been issued fully paid, 3,148,015 shares had been issued paid to 62 cents each and 21,313,577 contributing shares also of \$1 had been paid to 60c. and forfeited through non-payment of calls. The ordinary shares had been trading on the stock exchange about the 15th March 1983 at 2c. The company had lost the greater portion of its capital and so it decided to apply to the Supreme Court of New South Wales to sanction a reduction of capital. Prior to the date previously mentioned, the company had issued about 70,000,000 options to take up 31 shares at a discount of 75c. per share exercisable by the 1st June 1984. These originating summonses are concerned with 1,272,170 such options which were acquired by the

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respondent after the Supreme Court of New South Wales had approved the proposed reduction of capital. At all relevant times until the reduction of capital the company only had \$1 shares so its ordinary shares were consequently \$1 shares.

Article 34 permitted the appellant by special resolution to reduce its share capital. On the 15th March 1983 at the Annual General Meeting of shareholders of the appellant, a number of resolutions were put and carried. The material resolutions so far as this appeal is concerned are as follows as they appeared in the minutes of the meeting:

" 4. Reduction of Authorised Capital IT WAS RESOLVED that subject to the confirmation of the Supreme Court of New South Wales and pursuant to Section 123(1) of the Companies (New South Wales) Code ('the Code') and as authorised by Article 34 of the Articles of Association, the share capital of the Company be reduced from \$200,000,000 divided into 200,000,000 shares of \$1.00 each to \$20,000,000.00 divided into 80,000,000 shares of 25 cents each.

6. Reduction of Issued Capital IT WAS RESOLVED that subject to the passing of resolutions (4) and (5) above and the confirmation of the Supreme Court of New South Wales and pursuant to Articles 34 and 35 of the Articles of the Company and Section 123 of the Code the paid up capital of the Company be reduced from \$127,104,644.36 (comprising 112,364,727 fully paid shares of \$1.00 each; 3,148,018 contributing shares of \$1.00 paid to 62 cents each and 21,313,577 contributing shares of \$1.00 paid to 60 cents and forfeited through non-payment of calls) to \$3,179,190.13 (comprising 11,236,473 fully paid shares of 25 cents each; 314,802 contributing shares of 25 cents paid to 16 cents each and 2,131,358 contributing shares of

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25 cents paid to 15 cents and forfeited through non-payment of calls) by cancelling the sum of \$123,925,545.23 being paid up capital which is lost and is also unrepresented by available assets to the extent of 0.975 cents per share on each of the fully paid shares (total \$109,555,608.82) and to the extent of 0.604 cents per share on each of the partly paid shares (total \$1,901,402,87) and to the extent of 0.585 cents per share on each of the forfeited shares (total \$12,468,442.54). Fractions resulting from the reduction of capital will be rounded up to the next highest number.

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9. New Options

IT WAS RESOLVED that subject to the passing of resolutions (4), (5), (6) and (8) set out above, that the holders of options granted by the Company to purchase fully paid \$1.00 shares in the Company on or before the 1st June, 1984 at an exercise price of 25 cents be offered one option to acquire one fully paid 25 cent share exercisable on or before the 31st December, 1985 at an exercise price of 20 cents per option for every ten options currently held and where as a result of the foregoing any option holder becomes entitled to a fraction of an option to acquire a fully paid 25 cent share such option holder receive one option exercisable on or before the 31st December, 1985 at an exercise price of 20 cents to purchase a fully paid share in respect of that fraction. "

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It is common ground the options which the respondent purchased were each in the following form:

" THIS IS TO CERTIFY that the abovenamed is the registered holder, subject to the Memorandum and Articles of Association of the Company, of the undernoted options over fully paid shares of \$1.00 each subject to the conditions overleaf. "

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The above appeared on the front of the option certificate which was under the seal of the company. On the same page under the seal it was stated the options expired on the 1st June 1984. On the back of the document was a form of application for shares of \$1.00 each, a place for the number represented by the exercise and also a place for the total amount payable at the rate of 25c per share. Then followed a form of request to allot such shares and to accept them subject to the company's memorandum and articles of association. The conditions upon which the options might be exercised and the effect of such exercise were set out under a heading to that effect and were as follows:

" Each option may be exercised by forwarding to Capital Share Registry Pty. Ltd. 15th Floor, 200 St George's Terrace, Perth, W.A. 6000, the application for shares duly completed together with payment of 25 cents (being the application and allotment money for each new share listed on up) and surrendering to the company of this certificate. The options may be exercised at any time prior to the 1st June 1984.

The options may be transferred by an instrument (duly stamped where necessary) in the form commonly used for transfer of shares at any time prior to the 1st June 1984.

Shares issued on the exercise of options will be allotted after receipt of all relevant documents and payments and will rank equally with the existing ordinary shares of the company.

Applications for listing on the Optional lists of the Stock Exchanges on which the Companies Securities are listed will then be made of the shares then in issue pursuant to this option.

The capital reduction provided for by the special resolution was confirmed by the Supreme Court of New South Wales on the 16th March 1983. Mr. Evans, a Director of Forsayth, gave evidence under cross-examination that no meeting of creditors was held in relation to the reduction

nor was any meeting of option holders held at the time of the reduction. On a date or dates not specified, the appellant then issued to its shareholders a document entitled "Recall of Certificates" advising the effect of the reduction of capital upon the issued shares and notifying approval by the Court, and requesting the return of share certificates to be exchanged for new shares to be issued pursuant to the capital reduction and reconstruction. Evans stated that in his belief a copy of that document would have been issued to the holders of the June 1984 options. The 10

document referred to those options in the following terms:

" In addition the holders of options to purchase one fully paid \$1 share in the Company on or before June 1st 1984, at an exercise price of 25c per option are hereby offered one option, for every 10 options currently held, to purchase one fully paid 25c share exercisable on or before December 31 1985 at the exercise price of 20c per option. "

According to Evans, as to whether some option holders accepted the invitation to seek an exchange, the company had 20 had no refusals as such but he thought the figures up to date were that 62 million options out of a total of 70 odd million had taken up the offer "because it was a very lucrative scheme offered to them." His evidence went on that the new options were listed for trading on the Stock Exchange but the company took no steps to cause the June 1984 options to be de-listed (they had previously been listed) as they were not quoted and he believed it was a matter for the Stock Exchange to de-list them.

Correspondence ensued between the parties in April, May 30 1984. It is not necessary to go to the correspondence except to recite the respondent made an application for the options to be registered in its name. The response was to

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point out the terms of the capital restructure and the alleged entitlement of option holders to take up one 25c share at a cost of 20c for each ten options in respect of \$1 shares. That was followed by the appellant forwarding to the respondent a certificate certifying it to be the registered holder, subject to the memorandum and articles, of 127,217 options over fully paid shares of 25c each "subject to the conditions overleaf" which condition provided, inter alia, for the exercise of the options at any time prior to the 31st December 1985 on the payment of 20c for each new share taken up. By letter of the 30th May 1984 the respondent advised it had never accepted the offer to take up the December 1985 options, returned the said certificates, and purported to exercise its June 1984 options to take up 1,272,170 shares of \$1 each enclosing the sum of \$318,042.50 the total exercise price at 25c per share. The appellant rejected the alleged acceptance but undertook to issue 127,217, 25c shares "upon proper exercise of the option". Both parties then commenced proceedings for declarations as previously referred to. The relief sought on both sides was limited to declarations.

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Senior counsel for the appellant during his argument at times made reference to what he claimed would be the inequitable result to the company and its shareholders if the respondent's view of the option contract was upheld. Though it was immediately agreed such considerations ought not to be the basis of a decision by this Court it was said that they were matters which ought to be taken into account when attempting to construe the terms of the contract since

the parties surely could not have contracted on a basis which would have such an inequitable result. Considerations of fairness or unfairness as between the company or its existing shareholders and the respondent seem to me to be of little assistance in resolution of the problems thrown up in this case, nor do I think it material that, theoretically at least, if the respondent's view is sustained, and it ultimately acquires the number of shares it seeks, it may reap considerable financial benefit. What is relevant is the construction of the option contract.

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In summary, the appellant's argument went like this. A share in a company among other things, is an aliquot proportion of the company's share capital: Archibald Howie Pty. Ltd. v. Commissioner of Stamp Duties (N.S.W.) 77 C.L.R. 143 per Dixon J. at 152. An option to take up shares in a company is either:

(a) a contract to issue shares in the company upon the fulfilment of the conditions of the exercise;

or

(b) an offer to issue shares in the company, together with a contract not to revoke the offer during the period of the option: Laybutt v. Amoco (Australia) Pty. Ltd. 132 C.L.R. 57 at 71.

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On either view the option holder is entitled to be issued a number of shares in the company which will give him an aliquot proportion of the company's share capital being the proportion that the number of option bears to the total

number of issued shares. At all times the appellant company had, and still has, only one class of shares, namely ordinary shares. The options in type held by the respondent entitle it to be allotted a number of ordinary shares in the appellant, the right to be allotted to such shares being expressed to be "subject to the Memorandum and Articles of Association". Shares issued pursuant to the options are to "rank equally with the existing ordinary shares of the company". Article 34 provides power in the appellant to reduce its capital. The respondent's right to be allotted the number of ordinary shares stated in the certificates was subject to all the powers contained in the articles of Association including the power of the company to reduce its capital: Hirsch and Co. v. Burns and Anor. 77 L.T. 377. The appellant on the 15th March 83 in the exercise of its powers under Article 34 and with the approval of the Supreme Court of New South Wales, reduced its capital as stated previously. Upon the reduction of capital being effected, option holders became entitled to be issued a number of shares which was identical to the number of shares the option holder would have had after the reduction if he had exercised his option before the reduction. Accordingly, the respondent became entitled to be issued 127,217 ordinary shares of 25c each, that is one 25c ordinary share for every ten \$1 ordinary shares the respondent would have been entitled to before the reduction. Further, or alternatively, it was a condition of the option that upon it being exercised the shares issued pursuant to it would rank equally with the existing ordinary shares of the appellant company.

In order for the shares issued pursuant to the options to do so, the number of shares issued must necessarily take account of the reduction for further, in the alternative, the options were to acquire a number of ordinary shares in the appellant company, subject once again to the power of the appellant to reduce its capital by reducing the par or nominal value of its shares. The appellant having reduced the par or nominal value of its ordinary shares from \$1 to 25c, the option holders became entitled to the stated number of ordinary shares having a par or nominal value of 25c. On this basis the respondent would have become entitled to take up 1,272,170 ordinary shares of 25c each. As the respondent purchased the options held by it after the reduction and with knowledge of it, accordingly, in exercising the options, it must be taken as having agreed to be allotted only such number of shares as it would have been entitled to after the reduction on the basis of one 25c ordinary share for every ten \$1 ordinary shares at 20c each. 10

To recapitulate, the appellant seems to ask the Court to construe the contract with one of three possible results. 20

- (a) On the exercise the respondent would be entitled to acquire one 25c share upon payment of a price of 20c in respect of every ten options to acquire \$1 shares.
- (b) The respondent became entitled to acquire one 25c share for 25c for each ten options to acquire a \$1 share.
- (c) The respondent became entitled to acquire one 25c share on the payment of 25c for each \$1

share it had previously been entitled to acquire.

In the first two cases the respondent would have acquired 127,217 25c shares, by the payment either of 20c or 25c per share, while in the latter case, it would have acquired 1,272,170 25c shares at a payment of 25c each. Before turning, however, to the construction of the contract in detail it is necessary to deal with the defence of frustration.

It is said and there is no dispute that the options were granted subject to the memorandum and articles whatever that might mean. The cases Bannatyne v. Direct Spanish Telegraph Company 1887 34 Ch.D. 287 per Cotton L.J. 301-2, in Re Barrow Haematite Steel Co 1888 39 Ch.D. 582 per North J. at 603 and in Re Credit Assurance and Guarantee Corporation Limited (1902) 2 Ch. 601 abundantly support the proposition. As the company had power to reduce its capital pursuant to Article 34 therefore it is said the option holder took the risk that there would be no \$1 shares to be issued to him at the relevant time. It could, of course, up to the reduction of capital which eliminated \$1 shares, have exercised its option but, having failed to do so before the reduction then on this argument it would be left with no rights at all under the contract which would have been frustrated. The real problem with this argument is that the appellant remains capable in general meeting by ordinary resolution of creating \$1 shares so as to comply with the existing June 1984 options. Article 30(a) expressly provides that the company may increase its share capital by

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the creation of new shares of such amount as it thinks expedient. It might also, by the same article, consolidate its 25c. shares if it wished into \$1 shares, both issued and unissued. Indeed, this company did exercise its powers pursuant to Article 30(a) shortly after the options were originally granted for it did not have on hand enough unissued \$1 shares to accommodate all the options if they had been exercised so it increased its capital in case of that eventuality. Hirsch and Co. v. Burns is clear authority that the fact that a company has given to any person the option of taking its unissued shares at a future date at an agreed price does not fetter the company in any way in the conduct of its business in the interval, and it may exercise all the powers conferred upon it by the memorandum or articles of association, and either dispose of its business to another company or agree to voluntary liquidation. I will come back to this case later. For the purpose of this point, however, it must be accepted the appellant was entitled to reduce its capital (if what it did so far as the unissued \$1.00 shares are concerned amounted to a reduction) and to do so in the manner which it did. But I do not think the reduction has had the effect of frustrating the contract simply because there is of now, at the moment at any rate, no \$1 shares available to satisfy the exercise of the options.

So far as the construction of the option contract is concerned the appellant says that the construction or the constructions for which it contends are to be read from the wording of the option and particularly the conditions of

exercise but alternatively it is said the Court ought to imply a term which would lead to the same result. A recent authority on the conditions which must be satisfied before a term will be implied is Codelfa Construction Pty. Ltd. v. State Rail Authority of New South Wales 56 A.L.J.R. 459 per Mason J. at 461. The conditions necessary to ground the implication have been summarised in B.P. Refinery Pty. Ltd. v. Hastings Shire Council 52 ALJR 20 at 26 as follows:

- (1) It must be reasonable and equitable;
- (2) It must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it;
- (3) It must be so obvious that "it goes without saying";
- (4) It must be capable of clear expression;
- (5) It must not contradict any express term of the contract.

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Senior counsel for the appellant so far as I recall, did not formulate expressly an implied term and no doubt, I suspect, the reason for that is that it is not by any means an easy matter to spell out one which meets the conditions. On two of the possible constructions as compared to the June 1984 options, the respondent is to have a reduced number of shares at a reduced par value, exercisable at a different time and at a different rate of discount or at no discount. Whether the term is so obvious that "it goes without saying" has to be decided upon the circumstance surrounding the making of the contract and prevailing at that time. I feel it entirely improbable an officious bystander listening to the representatives of the appellant and a prospective optionee negotiating the terms of the

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option would have said to them "What is to be the position if the company reduces its share capital so as to obliterate the existence of the \$1 shares?". I have not the slightest doubt neither the appellant nor the prospective optionee would have been thinking in terms of loss of capital but rather on the prospect of the increase in value above par of the shares by reason of a successful exploration programme. Indeed the officious bystander might have said "It goes without saying the appellant will have available to issue \$1 shares unissued in case the options are exercised". 10

The appellant may not cancel shares which at the date of the passing of the resolution in that behalf, have been taken or agreed to be taken: Article 30(e). An option holder has not agreed to take the shares for he does not do that until he has exercised the option. On the other hand the appellant was bound to give the respondent the shares, the subject of the options at the price they were offered and when the option was exercised by notice. As Lord Brampton said in Hilder v. Dexter (1902) A.C. 474 at 482: 20

" The directors were bound to give him those options at the price they were offered, and when he exercised them by his notice, he became bound to take and pay for the shares at that price. "

The reduction in capital applied to both issued and unissued shares. At the time of the reduction there were 136,826,322 issued shares either fully paid up, partly paid up, or partly paid up and forfeited. The reduction has had the effect of cancelling the unissued \$1 shares and substituting for them 25c. shares. There was no need for 30 the appellant to have done that since it could have effected

the reduction on only the issued capital and maintained the unissued capital though I appreciate there may have been problems if, at a later stage, \$1 shares had been issued, so far as listing the \$1 shares and 25c shares on the Stock Exchanges. If there had been such a problem that could have been overcome by converting the issued \$1 shares into 25c. shares. Properly viewed the special resolution approved by the New South Wales Supreme Court was partly a reduction of capital and partly a cancellation of unissued shares. There was no need to obtain the Court's consent to the cancellation. I am therefore of the view that no term can be implied into the contract which would have the effect of yielding a construction which would support any one of the appellant's contentions. Rather, if a term is to be implied I would have thought it should be that the appellant would take no steps to deny itself ability to perform the obligations cast upon it should the option be exercised. 10

Much stress by both parties was placed upon the condition reading as follows:

" Shares issued on the exercise of options will be allotted after receipt of all relevant documents and payments and will rank equally with the existing ordinary shares of the company. " 20

In my view the words "the existing ordinary shares of the company" refer to the then existing ordinary shares, that is at the time of the granting of the option, namely, ordinary fully paid shares of \$1 each. I do not think the phrase has reference to whatever might be the existing ordinary shares of the company at the time of the exercise of the option. It is scarcely conceivable that was intended since the right granted to the optionee was to acquire a \$1 share at a 30

discount of 75c. The "Application For Shares" form states it to be in respect of "Ordinary Fully Paid Shares of \$1 each in Forsayth Oil and Gas N.L." The terms of the option envisage and imply that at the date of the exercise of the option the company would be able to supply, in discharge of its obligations, ordinary fully-paid shares of \$1 each. These shares on issue after exercise are to rank equally with the existing ordinary shares of the company. What the conditions contemplate is that upon issue these shares will not have any rights or obligations similar to a different class of shares which may have been created other than ordinary shares as, for example, preference shares or some other type of share. As far as I can see, should the company issue \$1 shares to the respondent they will rank equally with the existing 25c shares if 25c shares are to be regarded as the then ordinary shares of the company so far as material, in all respects as to dividends, voting rights and on winding up. 10

The appellant sought to spell out of the condition relevant to the exercise of the option that the option shares would rank equally with the existing ordinary shares of the company and the issue would take into account the reduction of capital. That would mean the number of issued shares would be proportional to the then issued capital of the company as the number of options was equal to the total number of issued shares at the time of the grant of the option. In my opinion this proposition can be answered in a number of ways. Firstly, the condition is directed to each individual share, that is to say it says each share will 20

rank equally with the existing ordinary shares of the company. It is not directed to any concept involving the totality of the option shares in respect of the then existing ordinary shares of the company at the time of the exercise. In any event I do not think any plausible equation is possible upon the issue of an option certificate. The option holder takes a number of risks not the least being that the company might issue a large number of shares prior to the exercise of the option so as to water down the aliquot proportion of the option holder's shares to the total issued shares of the company. Again, any such proportion would have to take into account the possibility of the exercise by other option holders of similar options and there can be no certainty as to how many of those options would be exercised. Furthermore, some of the existing issued share capital might be cancelled by reason, for example, of non-payment of calls. In other words, there are so many intangibles it is impossible to make any meaningful assessment of an option holder's rational proportion of the capital of the company whether issued or unissued and in any event it is a meaningless exercise unless and until the option is exercised. 10 20

The appellant also endeavours to place the appellant in the same position as it would have been had it exercised its option before the reduction, at least so far as the number of shares is concerned. To do so seems to be contrary of Hirsch and Co. v. Burns. What the stockbroking firm in that case hoped to obtain is more clearly demonstrated in the Court of Appeal decision which appears at 74 L.T. 769. The

Court of Appeal decision reversing the trial Judge was upheld in the House of Lords. The following is taken from the judgment of Lindley L.J. The stockbrokers had the call, that is, an option to acquire, 36,354 shares in the South African company at 11/6d. per share by the end of April 1895. Before the stockbrokers had exercised their option the company entered into a contract to sell its business to the Johannesburg company for ~~£~~ 345,000 but the same agreement provided certain options for each of the shareholders of the South African company to acquire shares in the Johannesburg company. The stockbrokers were advised of what was going on and the suggestion was made to them that they should decide to exercise their options in the light of what had happened but they declined to do so until steps had been taken to wind up the South African company. In the meanwhile the value of shares in the Johannesburg company had greatly escalated so the shareholders of the South African company who had exercised their options to acquire shares in the Johannesburg company stood to gain a considerable financial advantage. As Lindley L.J. pointed out what the stockbroking firm was endeavouring to do was to get the advantage that would have accrued to them had they been wise enough to have exercised their options before it became too late to do so, so as to take advantage of the right to take up shares in the Johannesburg company. At p.775 his Lordship said:

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" It is a question of the time when a person chooses to become a shareholder, and he must stand upon that time, and he must get the advantages or disadvantages, whichever they are, at that time and not earlier."

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It is therefore not possible to look at this matter as if the respondent had exercised its option prior to the reduction of capital. It has exercised its option now and it stands to gain the advantages or disadvantages appropriate to that time.

There remain two other matters. The appellant says that as no consequential relief is sought, the declarations ought not to have been made. This is so, apparently, even though the appellant itself has claimed declaratory relief and by the grounds of appeal still does so. Reference was made to Neeta (Epping) Pty. Ltd. v. Phillips 131 C.L.R. 286 per Barwick C.J. at 307. That was a case however where a declaration was sought as to whether a contract had or had not been validly rescinded. Barwick C.J., commented that it was generally undesirable that a Court should so declare without any order for consequential relief. This is not such a case. Here the declaratory relief is sought as to the construction of the contract. In my view the relief sought was entirely appropriate.

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It was also said that this was a circumstance in which the Court even though there may have been a breach of contract would not grant specific performance. The matter was not fully argued before us and it was certainly not argued before the trial Judge. Specific performance has been granted in respect of the sale of shares, see Halsbury 4th edn., vol. 44 para. 424, and Northern Counties Securities Ltd. v. Jackson and Steeple Ltd. (1974) 1 W.L.R. 1133 at 1142-1145. It is premature whether specific performance would or would not be granted by the Court. If the

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final result of the litigation is that the declaration made by the trial Judge as amended, stands, it may be that will be sufficient to resolve the issue between the parties and in the end there may be no breach of contract. If not, the matter will no doubt come before the Court again and that will be the time to decide whether specific performance or damages in lieu is the appropriate remedy.

In my opinion this appeal should be dismissed except to the extent that the words "subject to any defences which may be available to Forsayth Oil and Gas N.L." should be added after the word "entitled" in paragraph 2. of the declaration made by the trial Judge.

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IN THE SUPREME COURT)
)
OF WESTERN AUSTRALIA)

Heard: 12th November 1984

Delivered: 19 DEC 1984

THE FULL COURT

CORAM: WALLACE, BRINSDEN & KENNEDY JJ.

Appeal No. 443 of 1984

B E T W E E N :

FORSAYTH OIL & GAS N.L.
Appellant
(Plaintiff)

and

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LIVIA PTY. LTD.
Respondent-
(Defendant)

Mr. S.P. Charles Q.C. with him Mr. R.J. Meadows
(instructed by Messrs. Muir Williams Nicholson)
appeared for the appellant.

Mr. D.K. Malcolm Q.C. with him Mr. C.L. Zelestis
(instructed by Messrs. Downing & Downing)
appeared for the respondent.

KENNEDY J.

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The appellant is a no liability company, which was incorporated in New South Wales on the 11th December, 1969. An application has been made for the transfer of the incorporation of the company to Western Australia, which application is pending before the National Companies Securities Commission.

Prior to the 15th March, 1983, the nominal share capital of the appellant was \$200,000,000, divided into 200,000,000 shares of \$1.00 each, of which 112,364,727 had been issued and were fully paid, in addition to 3,148,018 contributing shares 30 of \$1.00 each paid to 62 cents and 21,313,577 contributing

shares paid to 60 cents and forfeited through non-payment of calls. The company had also granted approximately 70,000,000 options to acquire \$1.00 ordinary fully paid shares in the company for 25 cents per share. Shortly before the 15th March, 1983, the fully paid ordinary shares had been trading at 2 cents each. It was obvious, therefore, that the options had at this time no market value and, although they were listed as securities on the Stock Exchange, no sales were taking place.

The form of option certificate issued by the appellant certified that the person named therein was the registered 10 holder, "subject to the Memorandum and Articles of Association of the Company", of the options set out therein over fully paid shares of \$1.00 each, subject to the conditions overleaf.

The conditions overleaf, which were printed under the heading, "Conditions upon which the options may be exercised, and the effect of such exercise", contained the following:

"The options may be exercised at any time prior to the 1st June 1984.

The options may be transferred by an instrument (duly stamped where necessary) in the form commonly used for transfer of shares at any time prior to the 1st June 1984. 20

Shares issued on the exercise of options will be allotted after receipt of all relevant documents and payments and will rank equally with the existing ordinary shares of the company. "

The form of application for shares printed on the back of the option certificate provided for the exercise of the option for ordinary fully paid shares and contained a request to 30 allot the shares and an agreement to accept them subject to the appellant's Memorandum and Articles of Association.

It is of interest to note that, on the 28th August, 1980, after the granting of the options, the appellant had increased its nominal capital from \$50,000,000 to \$200,000,000, this being said, on behalf of the appellant, to have been plainly necessary to accommodate the rights of the holders of the options which had at that time been granted to acquire some 70,000,000 \$1.00 ordinary shares in the appellant.

At the annual general meeting of shareholders of the appellant, held on the 15th March, 1983, a number of special resolutions were passed, including the following:

" That subject to the confirmation of the Supreme Court of New South Wales...the share capital of the Company be reduced from \$200,000,000 divided into 200,000,000 shares of \$1.00 each to \$20,000,000 divided into 80,000,000 shares of 25 cents each. "

" That...the Memorandum of Association of the Company be amended by deleting the existing Clause 4 and inserting:

'The share capital of the Company is \$20,000,000 divided into 80,000,000 shares of 25 cents each. The shares in the original or any increased or reduced capital may be divided into several classes and there may be attached to the shares whether original or otherwise respectively any preferential qualified special or deferred rights privileges and disabilities or conditions and any of such shares for the time being unissued may from time to time be issued with any such rights whether in respect of dividend or repayment of capital or both or any such special privilege over any share previously issued or then about to be issued or with such deferred rights disabilities or conditions as compared with any other shares previously issued or then about to be issued and with any special or restricted rights or without any right of voting and generally on such terms and subject to such conditions and provisions as may from time to time to be determined in accordance with the Articles of Association of the time being in force.' "

" That subject to...the confirmation of the Supreme Court of New South Wales...the paid up capital of the Company be reduced from

\$127,104,644.36 (comprising 112,364,727 fully paid shares of \$1.00 each; 3,148,018 contributing shares of \$1.00 paid to 62 cents each and 21,313,577 contributing shares of \$1.00 paid to 60 cents and forfeited through non-payment of calls) to \$3,179,190.13 (comprising 11,236,473 fully paid shares of 25 cents each; 314,802 contributing shares of 25 cents each paid to 16 cents each and 2,131,358 contributing shares of 25 cents paid to 15 cents and forfeited through non payment of calls) by cancelling the sum of \$123,925,454.23 being paid up capital which is lost and is also unrepresented by available assets to the extent of 0.975 cents per share on each of the fully paid shares (total \$109,555,608.82) and to the extent of 0.604 cents per share of the partly paid shares (total \$1,901,402.87) and to the extent of 0.585 cents per share on each of the forfeited shares (total \$12,468,442.54). Fractions resulting from the reduction of capital will be rounded up to the next highest number. "

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At the same meeting, it was also resolved, as an ordinary resolution, that, subject to the passing of the foregoing resolutions and another resolution (which was also duly passed):

" the holders of options granted by the appellant to purchase fully paid \$1.00 shares in the Company on or before the 1st June, 1984 at an exercise price of 25 cents be offered one option to acquire one fully paid 25 cent share exercisable on or before the 31st December, 1985 at an exercise price of 20 cents per option for every ten options currently held and where as a result of the foregoing any option holder becomes entitled to a fraction of an option to acquire a fully paid 25 cent share such option holder receive one option exercisable on or before the 31st December, 1985 at an exercise price of 20 cents to purchase a fully paid share in respect of that fraction. "

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No meetings of creditors were held in connection with the reduction of capital, nor were any meetings of option holders ever held.

On the 16th May, 1983, the Supreme Court of New South Wales confirmed the reduction of capital

Following this confirmation, the company sent both to its shareholders and to its option holders a notice headed 'Recall of Certificates'. In terms, it was directed to shareholders only, and it requested the return of their share certificates. The letter does, however, contain the paragraph:

" In addition, the holders of options to purchase one fully paid \$1.00 share in the Company on or before June 1, 1984, at an exercise price of 25 cents per option are hereby offered one option, for every ten options currently held, to purchase one fully paid 25 cent share, exercisable on or before December 31, 1985 at an exercise price of 20 cents per option. "

The offer to option holders appears to assume the continuance of the existing options, although, no doubt, at the time, the prospect of any holder of an option seeking to exercise it appeared minimal. Had the appellant held the options to which it now claims to be entitled immediately prior to the 15th March, 1983, and had it exercised them at that time, it would have had to outlay \$318,042 to acquire shares having a market value of \$25,443.

The appellant placed some weight upon the financial benefits which would accrue from the exercise of his options by an option holder at different times. Although, having regard to the nature of an option, differing results might be thought almost to be inevitable in such circumstances, it is of some interest to consider the case of the holder of 1,000 options prior to the reduction of capital. If the options had been exercised at this time, he would have secured 1,000 \$1.00 shares for an outlay of \$250, those shares being valued at \$20. After the reduction, he would have held 100 25 cent shares, which had cost him \$250, and which would, no doubt,

still have had a value of approximately \$20. Had he not exercised the options prior to the reduction of capital, but had instead accepted the offer which was made to option holders and then exercised his new options, he would have acquired 100 25 cent shares at a cost of \$20, being their approximate value. Clearly, the value of the appellant's shares would have had to rise very substantially indeed in order to give those who retained the old options any possible benefits from their options, assuming, for this purpose, that they remained capable of being exercised. It is not, I 10 believe, relevant to consider what those option holders stood to gain if, having held their options for a period, the appellant's assets increased in value for reasons totally unrelated to its capital structure.

As it turned out, the holders of some 62,000,000 options out of a total of approximately 70,000,000 accepted the offer made to them, an offer which was described as being very lucrative at the time. It may be that the appellant considered the offer to be so attractive as to lead every option holder to accept it, although, as the example I have 20 taken demonstrates, the immediate exercise of the new options would have meant simply that the purchase price of the shares equated their value. Be this as it may, however, thereafter the appellant appears not to have given any further consideration to those original option holders who did not accept the offer made to them until the respondent's claim to exercise its options was made. The appellant took no steps to have the Stock Exchange delist the old options. It left its shareholders and itself open to what has in fact occurred.

The precipitating event which has resulted in these proceedings was, no doubt, the very significant increase which occurred in the market price of the shares after the meeting of the appellant at which the resolutions were passed, in consequence of a gold discovery made by the appellant.

Subsequent to the 15th March, 1983, the respondent acquired 1,272,170 of the options expiring on the 1st June, 1984 with, it would appear to have been conceded, knowledge of the reduction of capital. It has not yet become registered by the appellant as the holder of those options. By letter dated 10 the 7th May, 1984, the respondent signified its intention to exercise those options to acquire \$1.00 shares and indicated, in addition, that it had not accepted the offer which had earlier been made to option holders to exchange their existing options for the new options to acquire fully paid 25 cent shares on payment of 20 cents per share, exercisable on or before the 31st December, 1985. On the 30th May, 1984, the respondent purported to exercise its options to acquire 1,272,170 ordinary fully paid shares of \$1.00 each in the appellant. 20

The appellant would not accept the entitlement of the respondent to exercise these options and, after certain further correspondence, it issued an originating summons seeking two declarations as against the respondent. The first was that the liability of the appellant to holders of options granted by the company for the acquisition of \$1.00 shares in the company is:

- (a) to grant to such holders, upon application by them, options to acquire 25 cent shares in the company, on the basis that there be one option to acquire one 25 cent share in the

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company at a price of 20 cents in exchange for every 10 options to acquire \$1.00 shares in the company thereupon surrendered to the company, or

(b) to issue to such holders, upon their purporting to exercise an option to acquire \$1.00 shares in the company, 25 cent shares in the company on the basis that one 25 cent share in the company be issued at a price of 20 cents in respect of every 10 options to acquire \$1.00 shares in the company sought to be exercised. 10

Expressed shortly, a declaration in terms of para. (a) would imply that the only entitlement of the option holders was to accept the offer previously made to option holders. A declaration in terms of para. (b) would relate the purchase price on the exercise of the option, in effect, to the market price of the shares shortly prior to the 15th March, 1983, for that appears clearly to have been the basis upon which the purchase price of 20 cents under the new options was calculated. It is not to be derived from any relationship 20 between the nominal value of the shares, before and after the reduction of capital and the purchase price under the original options.

The second declaration sought was that the rights conferred upon the holders of options to acquire \$1.00 shares in the appellant had been varied by the reduction of capital of the company effected pursuant to the special resolution of the company on the 15th March, 1983, so that such holders are entitled to acquire one 25 cent share in the company at a price of 20 cents each for every 10 options to acquire \$1.00 30 shares in the company which they may hold.

As to the second declaration sought, it may again be seen that the price of 20 cents is not related simply to the reduction of capital, as its terms suggest.

The respondent subsequently also issued an originating summons, in which it claimed, in the alternative to the declarations sought in the appellant's originating summons, a declaration as to the rights conferred upon the holders of options to acquire \$1.00 shares in the appellant and as to the liability of the appellant in the event of the exercise of such options, in the light of the events which have happened.

Although the declarations sought by both parties related in terms to the rights of all holders of options, no attempt was made to join any other option holder in the proceedings, 10 whether as a representative or otherwise. Indeed, strictly, the respondent is not yet, it would appear, an option holder, because the transfer of the options has never been registered.

The proceedings were consolidated by order dated the 6th August, 1984. They came on for hearing before Franklyn J. who, on the 17th September, 1984, dismissed the appellant's originating summons, and, on the respondent's originating summons, made the following declarations:

1. Upon the registration of transfers to it of 1,272,170 options for \$1.00 fully paid shares in the appellant at an exercise price of 25 cents, the respondent was entitled to be issued with an option certificate in its name certifying that it was the registered holder of 1,272,170 options for \$1.00 fully paid shares in the appellant at an exercise price of 25 cents. 20

2. Upon the exercise by the respondent, as it did on the 30th May, 1984, of the aforesaid 1,272,170 options for \$1.00 fully paid shares in the appellant at an exercise price of 25 cents the respondent was entitled to be issued with 1,272,170 \$1.00 fully paid shares in the capital of the appellant and the appellant was liable to take such steps as may be necessary to issue such shares to the respondent including the calling of any necessary general meetings of the appellant and using its best endeavours to procure the passage of such 30

resolutions as may be necessary to enable such shares to be issued to the respondent.

The appellant now appeals against the decision of the learned trial Judge and seeks orders:

1. In lieu of the declarations made by him, that it be declared that:

(1) The liability of the appellant to the holders of options granted by the appellant for the acquisition of \$1.00 shares in the appellant was to issue to such holders, upon their purporting to exercise an option to acquire \$1.00 shares in the appellant, 25 cent shares in the appellant on the basis that one 25 cent share in the appellant be issued at a price of 20 cents in respect of every 10 options to acquire \$1.00 shares in the appellant sought to be exercised. 10

(2) That the rights conferred upon the holders of options to acquire \$1.00 shares in the appellant were varied by the reduction of capital of the appellant effected pursuant to the special resolution of the appellant on the 15th March, 1983, so that such holders were entitled to acquire one 25 cent share in the company at a price of 20 cents each for every 10 options to acquire \$1.00 shares in the company which they held. 20

Alternatively that it be declared that the liability of the appellant to the holders of options granted by the appellant for the acquisition of ordinary shares in the appellant was to issue to such holders, upon their purporting to exercise an option to acquire ordinary shares in the appellant, one ordinary share in the appellant at a price of 25 cents each in respect of each option to acquire an ordinary share in the appellant sought to be exercised, whatever the nominal or par value of the ordinary shares in the appellant may be at the time of the exercise of the option. 30 40

2. That the rights conferred upon the holders of options to acquire \$1.00 shares in the appellant were varied by the reduction of capital of the appellant effected pursuant to the special resolution of the appellant on the 15th March, 1983, so that such holders were entitled to acquire one 25 cent share in the appellant at a price of 25 cents each for every 10 options to acquire a \$1.00 share in the appellant which such option holders held. 50

Alternatively, that such holders were entitled to acquire one ordinary share in the appellant at a price of 25 cents each for each such option held.

The alternative declaration sought in para. 1 derives from an amendment to the originating summons which the appellant indicated in its Notice of Appeal it would seek leave to make. This declaration involved the disregarding of the facts that the options are to acquire \$1.00 ordinary shares and not simply ordinary shares, and that the purchase price represents a discount of 75% of the nominal value of those shares.

The appellant also seeks to have the respondent's application dismissed. If, however, the declarations made by the learned trial Judge otherwise stand, the appellant seeks to limit them by the addition of the qualification, "subject to any defences which may be available to Forsyth Oil & Gas N.L.".

The grounds of the appeal, as amended, are:

1. The learned Judge was wrong in law in holding that, after the reduction of the appellant's capital on the 15th March, 1983, the option holders were entitled to be issued with an ordinary share having a nominal or par of \$1.00 in the appellant, at a price of 25 cents a share for every option held, more particularly in that ordinary shares of a nominal or par value of \$1.00 in the appellant no longer existed after that date. 20
2. The learned Judge should have held that the rights of the option holders after the reduction of the appellant's capital was to be issued with one 25 cent share for each ten \$1.00 share options as a result of the reduction in capital of the company whereby ten shares of a nominal value of \$1.00 became the equivalent of one share of a nominal value of 25 cents each. 30

Alternatively, the subject matter of the options was in each case a number of ordinary shares in the appellant (whatever their nominal or par value might be from time to time) to be acquired upon payment of a price of 25 cents each and the learned Judge should therefore have held that the right of the option holders was to acquire one ordinary share of a nominal or par value of 25 cents at a price of 25 cents each for every option on the basis that the appellant had lawfully reduced the nominal or par value of its ordinary shares from \$1.00 each to 25 cents each.

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2A. Alternatively, the learned Judge should have held that the respondent was not entitled to the declarations sought by it or as made by him on the ground appearing in the preceding grounds of appeal.

2B. Alternatively, having regard to the uncontradicted evidence that the respondent purchased the option now held by it after and with knowledge of the reduction in the capital in the appellant, the learned Judge should have found that there was no contract as between the appellant and the respondent whereby the appellant was required to deliver to the respondent, upon the options being sought to be exercised, shares having a nominal or par value of \$1.00 in the appellant.

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3. As it was common cause that questions of specific performance could not be dealt with on the hearing before his Honour and should be preserved, the learned Judge should have rendered the declaration made by him in paragraph 1(2) of his Honour's orders subject to any defences which may be available to the appellant in respect of any claim for specific performance.

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3A. Alternatively, the learned Judge should have found that specific performance was not, in all the circumstances, an appropriate remedy and in consequence should have found that the respondent's remedy was limited to whatever right it may have in damages (if any) and not to the declarations sought by the respondent or as made by him.

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The argument put for the appellant was that the options acquired by the respondent entitled it to be allotted a number of ordinary shares in the appellant. The right to be allotted those shares, however, was expressed to be "subject to the {50

Memorandum and Articles of Association", under which the appellant was empowered to reduce its capital. Upon the confirmation of the reduction in capital, all shareholders became entitled to one 25 cent share for every ten \$1.00 ordinary shares which they held prior to the reduction. All of this may readily be accepted. The next step in the argument, however, which I am unable to accept, was that, upon the reduction in capital being effected, option holders became entitled to be issued with the number of shares which was identical to the number of shares which the option holder would have had after the reduction, if he had exercised his option before the reduction, that is, 127,217 ordinary shares of 25 cents each. No convincing reason was forthcoming as to why the option holder should be treated as if he had exercised his options when he had not done so. Furthermore, this submission ignores the problem of the exercise price of 25 cents for each \$1.00 share. Is that price also to be reduced by a factor of 40 to .00625 cent per share? Or is the option price to be 25 cents for each 25 cent share, ignoring the discount to which the option holders were entitled? I can see no basis for any such transmutation in the original rights of the option holders to one \$1.00 share on payment of 25 cents. It remains within the power of the company to recreate \$1.00 shares, in just the same manner as, in 1980, it created sufficient \$1.00 shares to enable it to meet its obligations in the event of all the option holders exercising their options. None of the resolutions passed by the company expressly purported to affect the rights of the option holders who were, indeed, never consulted. All that happened was that

they were given the right to surrender their options in return for other options which, at the time, were thought vastly to be preferred.

The appellant relied upon the decision of the House of Lords in Hirsch & Co v. Burns (1897) 77 L.T. 377. That does not, however, appear to me to assist it. The case establishes two propositions, the first being that, after liquidation proceedings have commenced, a person holding an option of taking shares in the company is entitled, if he chooses to exercise his option, to have shares issued to him. The second is that the fact that a company has given to any person the option of taking its unissued shares at a future date at an agreed price does not fetter the company in any way in the conduct of its business in the interval, and that it may exercise all the powers conferred upon it by the Memorandum and Articles of Association of the company. As expressed by Lord Halsbury L.C. at p.378:

" (It would be a most serious suggestion that, in the case of a contract of this character" (an option of taking unissued shares) "- which is in truth nothing more or less than a contract for a sale of shares - there must be imported into it a term that the company will or will not carry on its business in a particular way; that it shall be restricted from carrying on its business in a particular way by reason of this implied term," (that the company would not wind-up and would not deprive itself of the power of fulfilling the contract by issuing shares of a particular character, that is, shares in the company which was then going and, as a corollary from that, that the person who was entitled to share in the benefits or profits of the company as it was then going must have been entitled to be a shareholder in the company which was so conducted that it had not parted with any of its assets between the time of the making of the contract and the time when the fulfilment of the contract came to be demanded) "by which it shall place upon itself fetters so that it

cannot continue carrying on the business which it was originally carrying on. I entirely repudiate any such notion as applied to a contract of this character. "

Referring to the option agreement, Lord Watson said, at p.379:

" I do not think that it imposed upon the company any obligation or duty whatever to abstain from conducting its business in the usual way, and exercising all the powers which were conferred upon it in that respect by its memorandum and articles of association; and I go this length, that they were quite entitled in the option of the shareholders to resort to such proceeding as a resolution to wind-up if, in the opinion of the shareholders, it was necessary and wise to do so. I do not think these are matters in which the appellants had any right to interfere. Their only right until the time expired during which they had a right of option or call for these shares was the demand that they should be made shareholders, if that were possible, and to have that interest in the assets and the management of the company which would belong to the holders of 36,000 shares. "

See also per Lord Herschell at p.380 and Lord Shand at p.382.

Whilst, on the basis of this authority, it is not open to the respondent or any option holder to complain of the restructuring of the capital structure of the appellant subsequent to the granting of the options, it does not follow that the shares which it was entitled to acquire were changed in nature.

The next argument put forward by the appellant was that it was a condition of the option that, upon its being exercised, the shares issued would rank equally with the existing shares of the appellant and that, in order for shares issued pursuant to the exercise of the options to rank equally with the existing ordinary shares, the number of shares issued must necessarily take account of the reduction. I am unable

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to accept this to be so. The condition in question requires the shares, issued pursuant to the exercise of the option to rank with the "existing ordinary shares", "existing", in my opinion, meaning existing at the time of the issue of the former shares. It seems to me quite inappropriate to have new shares ranking, for the purposes of, for example, dividends and voting rights, with shares which previously existed, but which have effectively ceased to exist. It will be noted that the reference in the consideration is simply to existing ordinary shares and not to existing ordinary shares of a 10 particular amount.

This particular condition means, essentially, that the existing ordinary shares are to carry no preferential or special rights or privileges under the memorandum and articles as against the ordinary shares to be issued to those exercising their options. It is true that, on this basis, the existing ordinary shares are 25 cent ordinary shares, but, nevertheless, they would carry no preferential rights as against any new \$1.00 ordinary shares. Voting rights are determined in accordance with article 57, which confers, on a 20 poll, one vote for every fully paid share and pro rata for partly paid shares. So far as dividends are concerned, under article 116 they are payable in proportion to the shares held, irrespective of the amount paid up or credited as paid up thereon. Neither as to dividends nor as to voting would I regard the articles as requiring the conclusion that new \$1.00 ordinary shares would rank other than equally with the existing 25 cent ordinary shares. I do not see that there is any necessity for their being of equal nominal value. The

position is similar with respect to the entitlement of shareholders in a winding-up pursuant to article 145. In my opinion, new \$1.00 ordinary shares are capable of ranking equally with the existing 25 cent ordinary shares.

Then it was argued, in the alternative, that the option was to acquire a number of ordinary shares in the appellant, subject to the power of the company to reduce its capital by reducing the par or nominal value of its shares. The appellant having reduced the nominal value of its ordinary shares from \$1.00 to 25 cents, it was said, the option holders 10 became entitled to the specified number of ordinary shares having a nominal value of 25 cents. I am unable to accept, however, that an option to acquire \$1.00 shares should be so converted into an option to acquire 25 cent shares. This argument also puts on one side the existence of the option holders' entitlement to a discount. Indeed, as I have indicated, the various possible constructions put forward by the appellant make no concession to the respondent's entitlement to a discount and involve a variation in price, whether in the actual sum to be paid or in the relationship 20 which that sum bears to the par value of the shares.

The next submission was that the rights of the option holder ceased on the reduction of capital, because the shares no longer existed, this being described in the written submission as frustration by the action of the appellant in reducing its capital. If it amounted to frustration, it was a self-induced frustration upon which the appellant could not rely, but apart from that, this submission overlooks the fact that \$1.00 ordinary shares can once again be created.

The fact that the respondent purchased the options after the reduction in capital and with knowledge of it does not appear to me to alter the rights which the options confer upon their holders. It provides no basis for any contention that the respondent must have agreed to be allotted only such number of shares as it would have been entitled to after the reduction - one 25 cent ordinary share for every ten \$1.00 shares. The facts of this case provide, in my view, no justification for creating any distinction between the rights of an original option holder and the rights of a transferee. 10 It may well be that the respondent has taken advantage of the situation; but, as I have already pointed out, it is a situation which was created by the appellant.

In his reply, counsel for the appellant for the first time asserted that a term should be implied in the option agreement. He was, however, forced to express it in the alternative, namely, either that the option to purchase a \$1.00 share should only remain open until the 1st June, 1984 unless before that time the company had altered its capital so that the ordinary shares of the company ceased to have a 20 nominal value of \$1.00, or, on the basis that the options did survive the reconstruction, that an option to buy a \$1.00 share was, upon that reconstruction, to equal the right given to any holder of a \$1.00 share in the company before reconstruction, having regard to the price payable by the optionee. The latter words once again gloss over the problem presented by the necessity to determine a price for the 25 cent shares.

Whether a term is to be implied in a contract is to be considered on the basis of the facts existing at time of the contract. In this case, are the parties to be taken to acknowledge that the company will overlook on a restructuring of its capital the rights of option holders who elect not to take up any offer for a substituted option? The suggested terms, it appears to me, are not necessary to give efficacy to the contract, however much they might enable the appellant to overcome a difficulty of its own creation. Neither of the terms is so obvious that 'it goes without saying'. Indeed, 10 the very fact that the implied terms are put up in the alternative makes it difficult to maintain the contrary view - see generally, B.P. Refinery (Westernport) Pty. Ltd. v. Hastings Shire Council (1977) 52 A.L.J.R. 20 at p.26, Secured Income Real Estate (Australia) Ltd. v. St. Martins Investments Pty. Ltd. (1979) 144 C.L.R. 596 and Codelfa Construction Pty. Ltd. v. State Rail Authority of New South Wales (1982) 56 A.L.J.R. 459.

In the end, whilst acknowledging the apparently unwarranted advantage which the respondent will gain over the 20 existing shareholders of the appellant, I am not persuaded that the learned trial Judge was wrong in taking the general view which he did. There are, nevertheless, certain difficulties in relation to the declarations which he made. If they stand, it is not contested by the respondent that they should be limited by the addition of the qualification "subject to any defences which may be available to Forsayth Oil & Gas N.L.", for a substantial issue arises in relation to the question of whether specific performance would be decreed

in favour of the respondent. As to that question, because it has not been fully argued, it would not be appropriate to express any concluded view. Nor, for the same reason, do I propose to consider the question of any damages recoverable by the respondent for breach of contract.

The second difficulty is more fundamental. It is that the declaration, amended as suggested, will leave unsettled issues between the parties consequent upon it. The appropriate course is always to administer the final remedies in the same proceedings. It may be suggested that the 10 declaratory relief granted should have been refused unless the respondent sought or submitted to final relief. The question now is whether the case should be remitted for further hearing to determine the matters in dispute, rather than simply making a declaration in respect of certain issues, leaving other issues in the same dispute unargued and undetermined - see Neeta (Epping) Pty. Limited v. Phillips (1974) 131 C.L.R. 286. With considerable hesitation, and appreciating the general undesirability of this course, and acknowledging that further proceedings may result, I have reached the conclusion 20 that, the case having reached this stage, the respondent should not be put to its election or the case remitted for further hearing.

In my opinion, the appeal, subject to the minor additions to the declarations to which I have referred, should be dismissed.

IN THE SUPREME COURT
OF WESTERN AUSTRALIA
OF THE FULL COURT

Appeal No. 443 of 1984

On appeal from Supreme Court
Actions No. 2252 of 1984
(formerly Company No. 56 of
1984) and No. 2253 of 1984
(formerly Company No. 114 of
1984)

Consolidated by Order dated 10
6th August 1984

B E T W E E N :-

FORSAYTH OIL & GAS N.L.

Appellant
(Plaintiff)

- and -

LIVIA PTY. LTD.

Respondent
(Defendant)

BEFORE THE HONOURABLE THE CHIEF JUSTICE, THE HONOURABLE
MR. JUSTICE BRINDEN AND THE HONOURABLE MR. JUSTICE
KENNEDY THE 7TH DAY OF FEBRUARY 1985.

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UPON the application of the Appellant by motion dated the 9th day of January 1985 and upon hearing Mr. R. J. Meadows of Counsel for the Appellant and Miss. M. E. Scanlon of Counsel for the Respondent it is ordered that:-

1. Subject to the due performance by the Appellant (Plaintiff) of the conditions hereinafter mentioned and subject to the final order of the Court upon the due performance thereof the Appellant (Plaintiff) have leave to appeal to Her Majesty in Council from the judgment herein of this Honourable Court given on the 19th day of December 1984 by which it was ordered that: 30

Document 10 - Order for Conditional
Leave to Appeal to Her Majesty in
Council: 7.2.1985

- "1. The judgment of the Honourable Mr. Justice Franklyn delivered the 17th day of September 1984 be varied by adding the words "subject to any defences which may be available to Forsayth Oil & Gas N.L. in respect of any claim by Livia Pty. Ltd. for specific performance" after the word "entitled" appearing in line 5 of paragraph (2) of the said Judgment, and after the word "liable" appearing in line 9 of paragraph (2) of the said judgment, so that paragraph (2) now reads:-
- 10
- "(2) Upon the exercise by Livia Pty. Ltd., as it did on 30th May 1984 of the aforesaid 1,272,170 options for \$1.00 fully paid shares in Forsayth Oil & Gas N.L. at an exercise price of 25¢, Livia Pty. Ltd. was entitled subject to any defences which may be available to Forsayth Oil & Gas N.L. in respect of any claim by Livia Pty. Ltd. for specific performance, to be issued with 1,272,170 \$1.00 fully paid shares in the capital of the aforesaid Forsayth Oil & Gas N.L. and the said Forsayth Oil & Gas N.L. was liable subject to any defences which may be available to Forsayth Oil & Gas N.L. in respect of any claim by Livia Pty. Ltd. for specific performance, to take such steps as may be necessary to issue such shares to the said Livia Pty. Ltd. including the calling of any necessary general meetings of the said Forsayth Oil & Gas N.L. and using its best endeavours to procure the passage of such resolutions as may be necessary to enable such shares to be issued to the said Livia Pty. Ltd."
- 20
- 30
2. The appeal otherwise be and is hereby dismissed.
- 40
3. The Appellant (Plaintiff) do pay the costs of the Respondent (Defendant) to be taxed with a certificate for Second Counsel."

Upon condition that the Appellant (Plaintiff) within a period of 3 months from the date of the order granting leave to appeal deposit on fixed deposit at Perth for a term of 3 months with any banking company carrying on business in the State of Western Australia a sum equivalent to £500.00

sterling in the name "Master, Supreme Court of Western Australia" and delivering the receipt therefor to a Master of this Honourable Court as security for the due prosecution of such appeal and the payment of all such costs as may become payable to the Respondent (Defendant) in the event that the Appellant (Plaintiff) does not obtain an order giving final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Appellant (Plaintiff) to pay the costs of the Respondent (Defendant).

10

2. There be liberty for each party to apply.
3. The costs of this application and order hereon be costs of the appeal.

BY THE COURT



REGISTRAR

THIS ORDER was extracted by Muir Williams Nicholson of 9th Floor, Australia Place, 15-17 William Street, Perth.
Telephone: 327 5777. Reference: RJM:PDE:FORS0770-018

REGISTRAR

THE COURT OF WESTERN AUSTRALIA

3

Document 10 - Order for Conditional
Leave to Appeal to Her Majesty in
Council: 7.2.1985

128

IN THE SUPREME COURT
OF WESTERN AUSTRALIA
OF THE FULL COURT

Appeal No. 443 of 1984

On appeal from Supreme Court
Actions No. 2252 of 1984
(formerly Company No. 56 of
1984) and No. 2253 of 1984
(formerly Company No. 114 of
1984)

Consolidated by Order dated 10
6th August 1984

B E T W E E N :-

FORSAYTH OIL & GAS N.L.

Appellant
(Plaintiff)

- and -

LIVIA PTY. LTD.

Respondent
(Defendant)

BEFORE THE HONOURABLE THE CHIEF JUSTICE, THE HONOURABLE
MR. JUSTICE BRINDEN AND THE HONOURABLE MR. JUSTICE
KENNEDY THE 19TH DAY OF FEBRUARY 1985.

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UPON the application of the Appellant by motion dated the 9th day of January 1985 AND UPON HEARING Mr. R. J. Meadows of Counsel for the Appellant and Miss. M. E. Scanlan of Counsel for the Respondent IT IS ORDERED THAT:-

1. The Appellant (Plaintiff) have leave to appeal to Her Majesty in Council from the judgment herein of this Honourable Court given on the 19th day of December 1984.

8057c/12.3.85/2

1

Document 11 - Final Order for Leave
to Appeal to Her Majesty in Council:
19.2.1985

2. The costs of the application be costs in the appeal.

BY THE COURT



REGISTRAR

THIS ORDER was extracted by Muir Williams Nicholson of 9th Floor, Australia Place, 15-17 William Street, Perth.
Telephone: 327 5777. Reference: RJM:PDE:FORS0770-018

Document 11 - Final Order for Leave
to Appeal to the Majesty in Council:
19.2.1985

2

8057c/12.3.85/2

BETWEEN:

Forsayth Oil & Gas N.L.

Plaintiff

-and-

Livia Pty Ltd

Defendant

DOCUMENTS BY CONSENT

1. Memorandum & Articles of Association of Forsayth Mineral Exploration N.L. 10
(Reference Articles 30-35 at pages 12-13.)
2. Notice of Meeting.
3. Notice of recall of certificates.
4. Letter Livia to Forsayth dated 13 April 1984 covering transfers of options and option certificates.
5. Letter Forsayth to Livia dated 9 May 1984 setting out rights of option holders following reduction of capital.
6. Letter Livia to Forsayth dated 30 May 1984 exercising options. 20
7. Application for shares dated 30 May 1984.
8. Receipt from Capital Share Registry dated 30 May 1984.
9. Letter Muir Williams Nicholson to Livia dated 30 May 1984 repudiating Livia's claim and returning cheques.

Prepared by Muir Williams Nicholson, 9th Floor, Austmark Centre, 15-17 William Street, Perth, solicitors for the Plaintiff.

Telephone: 327 5777 Reference: KW:PDE:FORS0770-018.

Exhibits.

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COMPANIES ACT, 1961
NO LIABILITY COMPANY

MEMORANDUM
and
ARTICLES OF ASSOCIATION

of

FORSAYTH MINERAL EXPLORATION N.L.

Hardings
Solicitors
4 Bridge Street
Sydney, 2000
27-3976

Printed by:
Kralco Duplicating Co. Pty. Limited
Box 3186, G.P.O.
Sydney, 2001
660-6177

Exhibits.
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NEW SOUTH WALES

No. of Company

116749

Stamp Duty

\$3.00

Companies Act, 1961
(Section 16 (3))

CERTIFICATE OF INCORPORATION OF
PUBLIC COMPANY

THIS IS TO CERTIFY that

FORSAYTH MINERAL EXPLORATION N.L.

is, on and from the eleventh day of December, 1969,
incorporated under the Companies Act, 1961, and that
the company is a No Liability Company.

10

GIVEN under my hand and seal, at Sydney, this
eleventh day of December, 1969.

F.J.O. Ryan
Registrar of Companies.

IT WAS RESOLVED that the directors be authorised to apply on behalf
of the Company to the National Companies and Securities Commission
for a certificate authorising the Company to make an application
under the provisions of the law in force in Western Australia,
for transfer of incorporation of the Company to Western Australia.

15/3/73
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EGM
28/8/80

IT WAS RESOLVED:

1. That the name of the Company be changed from FORSAYTH MINERAL EXPLORATION N.L. to FORSAYTH OIL & GAS N.L.

Exhibits.

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with Index

MEMORANDUM OF ASSOCIATION

of

FORSAYTH MINERAL EXPLORATION N.L.

NAME

1. The name of the Company is "FORSAYTH MINERAL EXPLORATION N.L."

OBJECTS

2. The objects for which the Company is established are for "Mining Purposes" within the meaning of the Companies Act, 1961, and without prejudice thereto or limitation thereof:-
10
 - (a) To acquire mines and lands for the purpose of mining; to prospect for and to deal in minerals, metals, ores, shale, coal, mineral oil, natural gases or similar substances; to mine, recover, treat and prepare same for marketing; to acquire mining, timber, maritime or water rights,

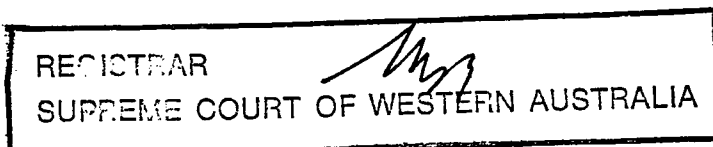
.1.

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prospecting permits, licences, leases and other rights and concessions and to exploit sell and deal in such concessions by sale sub-lease sub-licence or otherwise.

- (b) To apply for purchase take on lease or tribute or otherwise acquire and deal in and to manage supervise or control mines and mining properties grants concessions leases claims options licences of or other interests in mine rights mineral petroleum or other mining properties or interests or shares (undivided or other) therein and such water and other rights as are considered valuable or desirable by the Company. 10
- (c) To carry on the business of mining of ores metals minerals oils chemicals and all or any other natural substances of whatsoever nature organic or inorganic and the alloys products or by-products thereof.
- (d) To prospect for explore survey open work develop bore drill test and prove mines and claims minerals agricultural and other properties and to raise dig excavate dredge win quarry for store refine crush wash treat smelt reduce amalgamate and render merchantable precious stones metals ores oils coal minerals earths chemicals and other natural substances organic or inorganic and the alloys products or by-products thereof. 20
- (e) To carry on the businesses of contractors for drilling prospecting developing or other mining or other services hirers of or dealers in prospecting mining drilling or distilling or refining equipment and carriers by land air and/or sea and to purchase hire charter or otherwise acquire and dispose of land sea air or other vehicles pipe lines conveyances plant or equipment of any description. 30

.2.



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- (f) To enter into and carry into effect any arrangement for joint working prospecting or testing or for sharing of profits proceeds or interests or for amalgamation with any other company or any partnership or person possessed of mines or mining interests or other property or rights or carrying on business within the objects of this Company.
- (g) To search for ores and minerals mine and grant licences for mining in or over any lands which may be acquired by the Company and to lease any such lands for building or agricultural use and to sell or otherwise dispose of the lands mines or other property of the Company. 10
- (h) To buy sell manufacture import export and deal in and with minerals plant machinery implements conveniences provisions and things capable of being used in connection with mining operations or required by workmen and others employed by the Company.
- (i) To carry on the business of pumping, drawing, transporting, purifying, marketing, selling, disposing of and dealing in natural gas, petroleum, mineral oils and other substances. 20
- (j) To purchase, acquire, rent, build, construct, equip, execute, carry out, improve, work, develop, administer, maintain, operate, manage or control works and conveniences of all kinds, including therein roads, ways, railways, tramways, carrying or transport undertakings by land, water or air, stations, aerodromes, docks, harbours, piers, wharves, canals, reservoirs, water rights, water-works, water-courses, bridges, pipe lines, flumes, irrigations, embankments, power stations, gas works, hydraulic works, drainage, iron, steel, ordnance, engineering and improvement works, electrical works, telegraphs, telephones, cables, timber rights, sawmills, paper and pulp mills, crushing mills, collieries, coke ovens, foundries, 30

.3.

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furnaces; factories, warehouses, viaducts, aqueducts, markets, exchanges, stores, shops for the purposes of the Company and to contribute to or assist in the carrying out or establishment, construction, maintenance, improvement, operation management, control or superintendance thereof respectively.

- (k) To sell, let on tribute, grant options or rights to purchase over or otherwise improve, manage, develop, exchange, lease, sub-lease, mortgage, licence, dispose of, turn to account or otherwise deal with all or any part of the property whether real or personal and rights of the Company. 10
- (l) To purchase, take on lease or exchange, hire or otherwise acquire and to sell or otherwise deal with any real or personal property.
- (m) To lend and advance money or give credit to any persons firms companies or corporations on such terms as may seem expedient and in particular (but without prejudice to the general effect of the foregoing words) to subsidiary holding or associated companies and customers and others having dealings with the Company and to borrow money with and on joint and several or joint or several account with any persons firms companies (whether subsidiary holding or associated companies or not) or corporations and to give guarantees and become surety or security for any persons firms companies (whether subsidiary holding or associated companies or not) or corporations and without exception and to execute and give all such mortgages debentures guarantees and other securities either alone or in association or jointly and severally or jointly or severally with any persons firms companies or corporations for any of the purposes aforesaid as may be thought proper. 20 30
- (n) To pay all the costs charges and expenses of the promotion flotation (including brokerage) and

.4.

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establishment of the Company and to remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the Company's capital or any debentures or any other securities of the Company or in or about the organisation formation or promotion of the Company or the conduct of its business.

- (c) To establish and regulate, whether in or out of the State of New South Wales, agencies for any purposes of the Company and to establish local boards, and local and branch offices, to appoint attorneys and agents, to open branch registers, and to do all acts and things of whatever nature necessary to procure the Company to be registered incorporated or legally recognised in any part of the world and to secure to this Company the same rights and privileges in any part of the world as are possessed by local companies or partnerships of a similar nature. 10
- (p) To develop, renovate, repair or otherwise improve buildings or parts thereof for leasing, resale or otherwise as required for the purposes of the Company's activities. 20
- (q) Subject hereto to receive money on deposit with or without allowance of interest thereon and to receive and hold moneys or other property as Trustee and to invest the same in or upon such investments as the Board of Directors of the Company may think proper and from time to time to vary and transpose any such investments. 30
- (r) Subject hereto to give any guarantee or indemnity or third party mortgage which in the opinion of the Board of Directors may be necessary for any purpose.
- (s) To purchase apply for or otherwise acquire any patents brevets d'invention licences concessions

.5.

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and the like conferring any exclusive or non-exclusive or limited right to use any secret or other information as to any invention which may seem capable of being used for any of the purposes of the Company or the acquisition of which may seem calculated directly or indirectly to benefit this Company and to use exercise develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired.

10

(t) To provide for the welfare of persons in the employment of the Company or formerly engaged in any business acquired by the Company and the wives widows and families of such persons by grants of money pensions or other payments and by providing superannuation schemes or subscribing towards places of instruction and recreation and hospitals dispensaries medical and other attendance and other assistance as the Company shall think fit and to form subscribe to or otherwise aid benevolent religious scientific national or other institutions or objects which shall have any moral or other claims to support or aid by the Company by reason of the locality of its operations or otherwise.

20

(u) To enter into any arrangement with employees and others for the payment of bonuses or for participation in the profits of the Company or in any scheme of profit sharing.

(v) To promote and form companies and to join with any other company firm or person in promoting and forming companies within or without Australia and with such objects as shall be deemed necessary for the purpose and to subsidise or otherwise assist any such company and to take or otherwise acquire hold or deal in shares debentures or other securities of any such company and to advance moneys to any such company with or without security.

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.6.

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- (w) To enter into partnership or into any arrangement for sharing profits union of interests co-operation joint adventure reciprocal concessions or otherwise with any person or company carrying on or engaged in any business or transaction which this Company is authorised to carry on or engage in or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company.
- (x) To draw make accept endorse discount execute negotiate and issue promissory notes bills of exchange bills of lading warrants debentures and other negotiable or transferable instruments. 10
- (y) From time to time to appoint agents and attorneys with or without powers of sub-delegation and from time to time to revoke and cancel all or any such appointments or delegation and to remove any person or corporation appointed thereunder.
- (z) To enter into any arrangement with any Government or with any authorities municipal local or otherwise that may seem conducive to the Company's objects or any of them and to obtain from any such Government or authority any rights privileges and concessions which the Company may think it desirable to obtain and carry out exercise and comply with any such arrangements rights privileges and concessions. 20
- (aa) To do all or any of the above things in any part of the world and as principals agents contractors trustees or otherwise and by or through trustees agents or otherwise and either alone or in conjunction with others. 30
- (bb) To do all such other things as are incidental or conducive to the attainment of the above objects or any of them or which may be conveniently carried on and done in connection therewith or which may be calculated directly or indirectly to

.7.

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2. That the authorised share capital of the Company be increased from FIFTY MILLION DOLLARS (\$50,000,000) to TWO HUNDRED MILLION DOLLARS (\$200,000,000) by the creation of an additional One Hundred & Fifty Million (150,000,000) ordinary shares of one dollar each, and accordingly, that the Memorandum of Association of the Company be altered by changing paragraph 4 on page 2 from "The capital of the Company is FIFTY MILLION DOLLARS (\$50,000,000) divided into 50,000,000 shares of one dollar (\$1.00) each" to "The capital of the Company is TWO HUNDRED MILLION DOLLARS (\$200,000,000) divided into 200,000,000 shares of one dollar (\$1.00) each".

10

IT WAS RESOLVED that subject to the confirmation of the Supreme Court of New South Wales and pursuant to Section 123(1) of the Companies (New South Wales) Code ("the Code") and as authorised by Article 34 of the Articles of Association the share capital of the Company be reduced from \$200,000,000 divided into 200,000,000 shares of \$1.00 each to \$20,000,000.00 divided into 80,000,000 shares of 25 cents each.

20

IT WAS RESOLVED that subject to the passing of resolution (4) above by the shareholders that the Memorandum of Association of the Company be amended by deleting the existing Clause 4 and inserting:

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shares of
: altered
share
; of
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"The share capital of the Company is \$20,000,000.00 divided into 80,000,000 shares of 25 cents each. The shares in the original or any increased or reduced capital may be divided into several classes and there may be attached to the shares whether original or otherwise respectively any preferential qualified special or deferred rights privileges and disabilities or conditions and any of such shares for the time being unissued may from time to time be issued with any such rights whether in respect of dividend or repayment of capital or both or any such special privilege over any share previously issued or then about to be issued or with such deferred rights disabilities or conditions as compared with any other shares previously issued or then about to be issued and with any special or restricted rights or without any right of voting and generally on such terms and subject to such conditions and provisions as may from time to time be determined in accordance with the Articles of Association of the time being in force."

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enhance the value of or render profitable any business or property of the Company.

- (cc) To exercise and do all or any of the powers conferred on or implied in favour of a company under or by virtue of Section 19 of the Companies Act 1961, save and except Clauses 1 and 10 of the Third Schedule to that Act.

ACCEPTANCE OF SHARES

3. The acceptance of shares in the Company shall not constitute a Contract to pay calls in respect of the shares or to make any contribution towards the debts and liabilities of the Company. 10

CAPITAL

4. The share capital of the Company is \$5,000,000.00 divided into 25,000,000 shares of 20 cents each. The shares in the original or any increased capital may be divided into several classes and there may be attached to the shares whether original or otherwise respectively any preferential qualified special or deferred rights privileges and disabilities or conditions and any of such shares for the time being unissued may from time to time be issued with any such rights whether in respect of dividend or repayment of capital or both or any such special privilege over any shares previously issued or then about to be issued or with such deferred rights disabilities or conditions as compared with any other shares previously issued or then about to be issued and with any special or restricted rights or without any right of voting and generally on such terms and subject to such conditions and provisions as may from time to time be determined in accordance with the Articles of Association for the time being in force. 30

.8.


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SUBSCRIBERS

5. The full names and addresses and occupations of the subscribers hereto and the number of shares they respectively agree to take are as follows:-

<u>Name Address & Occupation</u>	<u>No. of Shares</u>	
ZOLTAN DAVID BURGER, 1 Carrington Avenue, BELLEVUE HILL. Company Director	1,000 shares	
ERWIN KATZ, 77 Morning Road, DOUBLE BAY. Company Director	1,000 shares	10
MORRIS MOSS, 23 March Street, BELLEVUE HILL. Company Director	1,000 shares	
ROBERT SOMERS THOMSON, 9 Wyvern Avenue, CHATSWOOD. Solicitor.	One (1) Share	20
KEITH WILLIAM DRAFER, 38 Highlands Avenue, GORDON. Solicitor	1,000 shares	

.9.

REGISTRAR

 SUPREME COURT OF WESTERN AUSTRALIA

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6. WE, the several persons whose names are subscribed hereto are desirous of being formed into a company in pursuance of this Memorandum of Association and respectively agree to take the number of shares in the capital of the Company set out opposite our respective names.

Signatures of Subscribers	No. of Shares taken by each Subscriber	Signatures and Addresses of Witnesses	
Z.D. BURGER	One thousand (1,000)	C. GARDINER, 720 George St., SYDNEY. Clerk.	10
ERWIN KATZ	One thousand (1,000)	C. GARDINER, 720 George St., SYDNEY.	
MORRIS MOSS	One thousand (1,000)	C. GARDINER, 720 George St., SYDNEY.	
R.S. THOMSON	One (1)	PAULA DONNELLEY, 4 Bridge Street, SYDNEY. Articled Law Clerk.	20
K.W. DRAPER	One thousand (1,000)	PAULA DONNELLEY, 4 Bridge St., SYDNEY. Articled Law Clerk.	

DATED this 4th day of December, 1969.

.10.

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Companies Act, 1961
No Liability Company

ARTICLES OF ASSOCIATION

of

FORSAYTH MINERAL EXPLORATION N.L.

INTERPRETATION

1. In these Regulations:-

"The Act" means the Companies Act, 1961.

"Directors" means the Directors for the time being of the Company and includes Alternate Directors.

10

"The Seal" means the common seal of the Company.

"Secretary" means any person appointed to perform the duties of a Secretary of the Company.

"The Company" or "this Company" shall mean the abovementioned Company.

"The Register" shall mean the Register of Members to be kept pursuant to Section 151 (1) of the Act.

1.

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"Dividend" includes bonus.

"State" means the State of New South Wales.

Expressions referring to writing shall unless the contrary intention appears be construed as including references to printing lithography and other modes of representing or reproducing words in a visible form.

Words importing only the singular number include the plural number and vice versa.

Words importing only the masculine gender include the feminine gender. 10

Words importing persons include corporations.

Subject to the foregoing words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the Acts Interpretation Act 1958 and of the Act as in force at the date at which these regulations become binding on the Company.

2. In every case where in these presents general expressions are used in connection with powers discretions or things such general expressions shall not be limited to or controlled by the particular powers discretions or things with which the same are connected. Any words and expressions denoting authority or permission shall be construed as words or expressions of authority merely and shall not be construed as words or expressions denoting directions or compulsory trusts. 20

EXCLUSION OF TABLE "B"

3. The regulations contained in Table "B" in the Fourth Schedule to the Act shall not apply to the Company.

2.

Exhibits.
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SHARES

4. The shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such persons on such terms and conditions and having attached thereto such preferred deferred or other rights and either at a premium or at par or (subject to the provisions of the Act) at a discount and at such times as the Directors think fit and with full power to give to any person the call of any shares either at par or at a premium during such time and for such consideration as the Directors think fit. 10
5. Notwithstanding anything hereinbefore contained the Directors shall not without the prior approval of the Company in general meeting allot any shares in the Company to any person or company in any case where such allotment would have the effect of transferring a controlling interest in the Company provided that this prohibition shall not apply in any case where:- 20
- (a) such person or company is already registered as the holder of a majority of the issued shares in the Company prior to such allotment; or
 - (b) such allotment is pursuant to an offer of shares to substantially all the holders of ordinary shares in the Company generally in proportion to their shareholdings.
6. Notwithstanding anything hereinbefore contained in the event of the Directors issuing shares to employees of the Company no Director shall participate in the issue of such shares to employees of the Company unless the shareholders in general meeting have approved of the specific allotment to be made to such Director and unless such Director holds office in an executive capacity. 30

3.

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7. (a) If the Company proposes to create and issue preference shares the rights of the holders of such shares or of any class thereof (as the case may be) with respect to repayment of capital participation in surplus assets and profits cumulative or non-cumulative dividends voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares shall be clearly defined in the Memorandum or the Articles and the Company may issue preference shares which rank pari passu with existing preference shares. The total nominal value of issued preference shares shall not exceed the total nominal value of the issued ordinary shares at any time. In the event of the Company creating or issuing preference shares the preference shareholders shall have the following rights:- 10
- (i) the same rights as ordinary shareholders as regards receiving notices, reports and balance sheets, and attending general meetings of the Company; 20
- (ii) the right to vote at any meeting convened for the purpose of reducing the capital, or winding up, or sanctioning a sale of the undertaking, or where the proposition to be submitted to the meeting directly affects their rights and privileges, or where the dividend on the preference shares is in arrear more than six months.
- (b) None of the funds of the Company or of any subsidiary thereof shall be employed in the purchase of or subscription for or lent on shares of the Company and the Company shall not except as authorised by Section 67 of the Act give any financial assistance for the purpose of or in connection with any purchase of or subscription for shares in the Company. 30
- (c) Subject to the provisions of Section 61 of the Act and to the provisions of Article 7 (a) hereof the

4.

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Company may issue preference shares which are or at the option of the Company are to be liable to be redeemed on such terms and in such manner as the Company before the issue of shares may determine.

- (d) If by the conditions of allotment of any share the whole or part of the amount or issue price thereof shall be payable by instalments every such instalment shall when due be paid to the Company by the person who for the time being and from time to time shall be the registered holder of the share or his legal personal representative.

10

8. An application for shares in the Company signed by or on behalf of the applicant and followed by an allotment of any shares thereon shall be deemed to be an acceptance of such shares within the meaning of these Articles entitling the Company to place the name of the allottee on the register in respect thereof.

9. The Company may subject to Section-58 of the Act at any time pay a commission to any person for subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares debentures or debenture stock of the Company or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares debentures or debenture stock in the Company but so that if the commission in respect of shares shall be paid or payable out of the capital the statutory conditions and requirements shall be observed and complied with and the amount or rate of commission shall not exceed ten per centum of the price at which the shares are issued or ten per centum of the nominal value of the debentures or debenture stock in each case subscribed or to be subscribed. The commission may be paid or satisfied in cash or in shares debentures or debenture stock of the Company. The Company may in addition to or in lieu of such commission pay such brokerage as is permitted by law.

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30

5.

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EGM
28/8/50

That Article 11 on page 6 of the Company's Articles of Association be altered from:

"The Certificates of Title to shares shall be issued under the seal of the Company and shall bear the manuscript or facsimile signatures of at least one Director and the Secretary or some other person appointed by the Directors. Where facsimile signatures are affixed to a certificate of title to shares such certificate shall bear evidence of examination by the Auditor of the Company or (subject to the provisions of the Act) by a transfer auditor appointed by the Directors for the purpose".

To:

"The certificates of title to shares shall be issued under the seal of the Company and shall bear the manuscript or facsimile signatures of at least one Director and the Secretary or some other person appointed by the Directors".

20

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10. Except as required by law no person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable contingent future or partial interest in any share or unit of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

CERTIFICATES

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11. The certificates of title to shares shall be issued under the seal of the Company and shall bear the manuscript or facsimile signatures of at least one Director and the Secretary or some other person appointed by the Directors. Where facsimile signatures are affixed to a certificate of title to shares such certificate shall bear evidence of examination by the Auditor of the Company or (subject to the provisions of the Act) by a transfer auditor appointed by the Directors for the purpose.

*changed
20/8/80*

12. Every member shall be entitled free of charge to one certificate for the shares registered in his name or if he so desires to several certificates in reasonable denominations and the Company shall complete such certificate or certificates within one month after the allotment or transfer thereof.

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13. If any certificate be worn out or defaced then upon production thereof to the Directors they may order the same to be cancelled and may issue a new certificate in lieu thereof; and if any certificate be lost defaced or destroyed a duplicate thereof may upon payment of a fee not exceeding ten cents be issued upon the conditions set out in Section 94 of the Act.

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6.

REGISTRAR
[Signature]
SUPREME COURT OF WESTERN AUSTRALIA

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14. In the case of a share held jointly by several persons the Company shall not be bound to issue a greater number of certificates for each of the shares so held than it would issue if such shares were held by one person and delivery of a certificate for a share to one of several joint holders shall be deemed to be delivery to all such holders.

CALLS ON SHARES

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15. The Directors may subject to Section ~~322~~ of the Act from time to time make such calls as they think fit upon the members in respect of all or any moneys unpaid on the shares held by them respectively and not by the conditions of allotment thereof made payable at fixed times. A call shall be deemed to have been made when the resolution of the Directors authorising such call was passed and may be payable by instalments. A call may be revoked or postponed as the Directors may determine. The Directors may subject to the Act from time to time make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls. 10 20
16. (a) Any share upon which a call at the expiration of fourteen days after the day for its payment is unpaid is thereupon forfeited and shall subject to the Act be offered for sale by public auction not more than six weeks after the date on which the call is payable.
- (b) Such sale shall be advertised not less than fourteen and not more than twenty-one days before the day appointed for the sale in a daily newspaper circulated generally throughout the State. However should the said share be on a branch register such sale shall be advertised in addition in a daily newspaper circulated in the place where the register is situated. 30

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- (c) At any sale by auction under Section 323 of the Act a share forfeited for non-payment of any call may if the Directors so determine be offered for sale and sold credited as paid up to the sum of the amount paid up thereon at the time of forfeiture and the amount of such call and the amount of any other call or calls becoming payable on or before the date of sale.
- (d) The proceeds of the sale shall be applied in:-
- (i) the expenses of the sale; 10
 - (ii) expenses necessarily incurred in respect of the forfeiture;
 - (iii) the calls then due and unpaid - and the balance (if any) shall be paid to the member or his executors administrators or assigns or as he directs whose share has been so sold on his delivering to the Company the share certificate that relates to the forfeited share.
17. At least fourteen days notice in writing of any call as well as such notice as the Act may prescribe shall be given to every registered shareholder specifying the time and place for payment and to whom such call shall be paid. No subsequent call shall be made until after the expiration of seven days from the day upon which the call made immediately previous to it is payable. The non-receipt of a notice of any call by or the accidental omission to give notice to any of the members or shareholders shall not invalidate the call. 30
18. The Directors may if they think fit receive from any member willing to advance the same all or any part of the sum due upon the shares held by him beyond the

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sums actually called for; and upon the amounts so paid or satisfied in advance or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made the Company may pay interest at such rate as the member paying such sum in advance and the Directors agree upon. And the Directors may at any time repay the amount so advanced upon giving to such member three months notice in writing. Any capital paid on shares in advance of calls shall not whilst carrying interest confer a right to participate in profits.

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19. The Company's lien on shares and dividends from time to time declared in respect of such shares, shall be restricted to unpaid calls and instalments upon the specific shares in respect of which such moneys are due and unpaid, and to such amounts as the Company may be called upon by law to pay in respect of the shares of a member or deceased person.

TRANSFER AND TRANSMISSION OF SHARES

20. No transfer shall be registered unless a proper instrument of transfer has been delivered to the Company. The transfer shall be proper if it is signed by the transferor only.
21. The transferor shall be deemed to remain the holder of a share until the name of the transferee is entered in the register in respect thereof.
22. Shares may be transferred in any usual form or in any other form which the Directors may approve, but any transfer in the form approved by the Australian Associated Stock Exchanges shall be acceptable.

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23. No fee shall be charged on the transfer of any shares or securities by the Company.
24. Every instrument of transfer shall be left at the office or in the place where a share register is kept accompanied by the certificate of the shares to be transferred and such other evidence as the Directors may require to prove the title of the transferor or his right to transfer the shares. All instruments of transfer which shall be registered shall be retained by the Company but any instrument of transfer which the Directors may decline or refuse to register shall (except in the case of fraud) on demand be returned to the person depositing the same. All powers of attorney granted by members for the purpose (inter alia) of transferring shares which may be lodged produced or exhibited to the Company or any of its proper officers shall as between the Company and the grantor of such powers be taken and deemed to continue and remain in full force and effect and the same may be acted upon until such time as express notice in writing of the revocation of the same or of death of the grantor shall have been given and lodged at the office. 10 20
25. The transfer books and register of members may on giving at least fourteen days' notice in some daily newspaper circulating throughout New South Wales be closed during such time as the Directors think fit not exceeding in the whole thirty days in each year. Every such register shall be audited at intervals of not more than three months.
26. The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons recognised by the Company as having any title to the shares registered in the name of such member or any benefits accruing in respect thereof and in the case of the death of any one or more of the joint registered holders of any registered shares the 30

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survivors shall be the only persons recognised by the Company as having any title to or interest in such shares or any benefits accruing in respect thereof.

27. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the Directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the Transferee thereof. 10
28. If the person so becoming entitled elects to be registered himself he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member. 20
29. Where the registered holder of any share dies or becomes bankrupt his personal representative or the assignee of his estate as the case may be shall upon the production of such evidence as may from time to time be properly required by the Directors in that behalf be entitled to the same dividends and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the registered holder would have been entitled to if he had not died or become bankrupt; and where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall for the purposes of these regulations be deemed to be joint holders of the share. 30

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ALTERATION OF CAPITAL

30. The Company in general meeting may by ordinary resolution do one or more of the following:-
- (a) increase its share capital by the creation of new shares of such amount as it thinks expedient;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (c) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination; 10
 - (d) subdivide its shares or any of them into shares of smaller amount than is fixed by the Memorandum so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (e) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled. 20
31. Any new shares shall be issued upon such terms and conditions and with such rights and privileges attached thereto as the Directors shall determine; and in particular such shares may be issued (subject to the provisions for the time being subsisting of any regulation of any Stock Exchange on which the shares of the Company are listed) with a preferential or qualified 30

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right to dividends and in the distribution of assets of the Company.

32. The Directors may before the issue of any new shares determine that the same or any of them shall be offered in the first instance and either at par or at a premium or at a discount to all the then holders of any class of shares in proportion to the number of shares held by them or make any other provisions as to the issue and allotment of the new shares.
33. Except so far as otherwise provided by the conditions of issue or by these presents any capital raised by the creation of new shares shall be considered part of the original capital and shall be subject to the provisions herein contained with reference to calls transfer and transmission and otherwise. 10
34. The Company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required by law. 20
35. The Resolution whereby any share is subdivided may determine that as between the holders of the shares resulting from such subdivision one or more of such shares shall have some preference or special advantage as regards dividend capital voting or otherwise over or as compared with the others or other.

MODIFICATION OF RIGHTS

36. If at any time the share capital is divided into different classes of shares the rights or conditions attached to any class (unless otherwise provided by the terms of 30

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issue of the shares of that class) may be varied or capital paid thereon may be repaid by an agreement between the Company and any person purporting to contract on behalf of that class provided such agreement is approved by a resolution of the holders of at least three-fourths of the shares affected at a special meeting of such holders convened for the purpose and the provisions from time to time contained in the Company's Articles of Association as to meetings shall mutatis mutandis apply to every such special meeting. In the event of such resolution not being carried at such meeting consent in writing to such agreement signed by the holders of at least three-fourths of the shares affected within two months from the date of special meeting shall be sufficient. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not unless otherwise expressly provided by the terms of issue of the shares of that class be deemed to be varied by the creation or issue of further shares ranking equally therewith.

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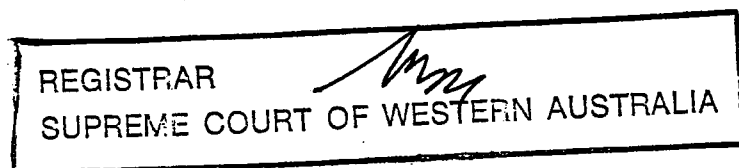
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BORROWING POWERS

37. The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property, assets and uncalled capital and to issue debentures and other securities whether outright or as collateral security, for any debt liability or obligation of the Company or any third party.
38. The Board may raise or secure the payment or repayment of such moneys or any such debt liability or obligation in such manner and upon such terms and conditions in all respects as it thinks fit and in particular by the issue of debentures or debenture stock perpetual or otherwise or upon bonds or mortgages charged upon all or any part of the property of the Company (both present and future) including its uncalled capital for the time

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being or upon bills of exchange bills of sale promissory notes or other obligations.

39. Debentures debenture stock bonds or other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued.
40. Any debentures debenture stock bonds or other securities may be issued at a discount premium or otherwise and with any special privileges as to redemption surrender drawings allotment of shares attending and voting at general meetings of the Company appointment of Directors and otherwise. 10
41. If the Directors or any of them or any other person shall become personally liable for the payment of any sum primarily due from the Company the Directors may execute or cause to be executed any mortgage charge bill of sale or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable as aforesaid from any loss in respect of such liability. 20
42. The Directors shall cause a proper register to be kept in accordance with the Act of all charges specifically affecting property of the Company and all floating charges on the undertaking or any property of the Company and shall duly comply with the requirements of the Act in regard to the registration of charges therein specified and otherwise.

GENERAL MEETINGS

43. A general meeting shall be held once at least in every year and not more than fifteen months after the holding 30

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of the last preceding general meeting at such times and places within the Commonwealth of Australia or its Territories as may be determined by the Board. Such general meetings (before which the annual accounts of the Company are to be laid) shall be called the annual general meetings. Any other general meetings of the Company shall be called an extraordinary general meeting and shall be specified as such in the notice calling it.

44. The Directors may whenever they think fit convene an extraordinary general meeting and extraordinary general meetings shall be convened on such requisition or in default may be convened by such requisitionists as is provided by the Act. 10

45. Where it is proposed to pass a special resolution at least twenty-one clear days' notice and in other cases at least ~~seven~~ clear days' notice specifying the place day and hour of meeting and in the case of special business the general nature of such business and in the case of an election of Directors the names of the candidates for election shall be given to the members by notice sent by post or otherwise served as hereinafter provided. And at least fourteen days' notice of any such meeting shall be given to every Stock Exchange on which any of the Company's shares are for the time being listed.

X
Must be ²⁰
not less than
14 days

46. The accidental omission to give notice of any general meeting to or the non-receipt of any such notice by any of the members or the Auditors or the Secretary of a Stock Exchange or the accidental omission to advertise (if necessary) such meeting shall not invalidate the proceedings at or any resolution passed at any such meeting. 30

PROCEEDINGS AT GENERAL MEETINGS

47. The business of an annual general meeting shall be to receive and consider the profit and loss account the balance sheet and the reports of the Directors and of the Auditors to elect Directors and to appoint Auditors and to fix their remuneration to declare dividends and to transact any other business which under these presents may be transacted at an annual general meeting. All other business transacted at an annual general meeting and all business transacted at an extraordinary meeting shall be deemed special. 10
48. Three or more members present personally or by representative or by proxy or attorney shall be a quorum for a general meeting and no business shall be transacted at any general meeting unless the quorum requisite be present at the commencement of the business.
49. The Chairman of the Board of Directors or in his absence the Deputy Chairman (if any) shall be entitled to take the chair at every meeting. If there be no chairman or Deputy Chairman or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding such meeting or is unwilling to act the Directors present may choose a chairman and in default of their doing so the members present shall choose one of the Directors to be chairman and if no Director present be willing to take the chair shall choose one of their number to be Chairman. 20
50. If within half an hour after the time appointed for the meeting a quorum is not present the meeting if convened upon such requisition as aforesaid shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week at the same time and place or 30

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to such other day time and place as the Directors may by notice to the shareholders appoint. If at such adjourned meeting a quorum is not present those present (being not less than two) shall be a quorum.

51. Every question submitted to a meeting shall be decided by a show of hands unless subject to Article 55 a poll is (before or on the declaration of the result of the show of hands) demanded and in the case of an equality of votes the chairman shall whether on a show of hands or on a poll have a casting vote in addition to the vote to which he may be entitled either in his own right or as a proxy or attorney or as a representative of a corporation.

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52. A poll may be demanded:-

(a) by the chairman;

(b) by any three members present in person or by attorney or by representative or by proxy; or

(c) by any member or members present in person or by attorney or by representative or by proxy and representing not less than five per centum of the total voting rights of all the members having the right to vote at the meeting; or

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(d) by a member or members holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll is so demanded a declaration by the chairman that a resolution has been carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the minutes of the proceedings of the Company

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shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

53. If a poll is demanded as aforesaid it shall be taken in such manner at such time and place as the Chairman of the meeting directs and either at once or after an interval or adjournment or otherwise and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Only the persons who were personally present or deemed to be personally present or represented by a proxy or attorney at the meeting shall be entitled to vote on a poll and no notice need be given to any other person of the taking of the poll. In case of any dispute as to the admission or rejection of a vote the chairman shall determine the same and such determination made in good faith shall be final and conclusive. 10 20
54. The Chairman of a meeting at which a quorum is present may with the consent of the meeting (and shall if so directed by the meeting) adjourn the same from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
55. The demand of a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded. No poll shall be demanded on the election of a chairman of a meeting or on the adjournment of a meeting. 30
56. If any general meeting shall be adjourned for more than twenty-one days a notice of such adjournment shall be given to all the members in the same manner as notice was or ought to have been given of the original meeting.

1. THAT Article 57 of the Articles of Association be altered to read:

4-11-82
CGM

"On a show of hands every person present in person or by proxy shall have one vote. On a poll every member present in person or by proxy shall have one vote for each fully paid share held by him in the Company and for every partly paid share held in person or by proxy a vote shall be pro-rata to the amount paid up per share."

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VOTES OF MEMBERS

57. On a show of hands every member present in person or by proxy shall have one vote. On a poll every member present in person or by proxy shall have one vote for each share held by him in the Company.

replaced
4-11-82

58. A member shall be entitled to be present and to vote on any question either personally or by proxy or as proxy for another member at any general meeting, or upon a poll and to be reckoned in a quorum in respect of any fully paid up shares and of any shares upon which calls due and payable to the Company shall have been paid, but shall not be entitled so to vote or be reckoned in a quorum in respect of any shares upon which any call or other sum so due and payable shall be unpaid.

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59. Any person entitled under the transmission clause to transfer any shares may vote at any meeting in respect thereof in the same manner as if he were the registered holder of such shares PROVIDED that forty-eight hours at least before the time of holding the meeting or adjourned meeting as the case may be at which he proposes to vote he shall satisfy the Directors of his right to transfer such shares unless the Directors shall have previously admitted his right to vote at such meeting in respect thereof.

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60. Where there are joint registered holders of any shares any one of such persons may vote at any meeting either personally or by proxy in respect of such share as if he were solely entitled thereto and if more than one of such joint holders be present at any meeting personally or by proxy that one of the said persons so present whose name stands first on the register in respect of such shares shall alone be entitled to vote in respect thereof. Several executors or administrators of a

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63. Shareholders shall be given an opportunity to vote by proxy for or against any special resolution submitted to a meeting of the Company.
64. The power of attorney (if any) or the instrument appointing a proxy and the power of attorney (if any) under which it is signed or an office copy or notarially certified copy thereof shall be deposited at the office not less than forty-eight hours before the time for the holding of the meeting or adjourned meeting as the case may be at which the person named in such instrument proposes to vote. 10
65. A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death of the principal or revocation of the proxy or power of attorney or transfer of the share in respect of which the vote is given provided no intimation in writing of the death revocation or transfer shall have been received at the office or by the chairman of the meeting before the vote is given.
66. Any corporation which is a member of the Company may by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any general meeting of the Company or of any class of members of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company. When such a representative of a corporation is present at a meeting of the Company the corporation which he represents shall unless such representative is otherwise entitled to be present thereat for the purposes of these Articles be deemed to be personally present at the meeting. 20 30

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DIRECTORS

67. The number of the Directors shall be not less than three nor until otherwise determined by a general meeting more than nine.
68. The number of the Directors and the names of the first Directors will be determined in writing by the subscribers of the Memorandum of Association of the Company or a majority of them.
69. The Directors of the Company shall hold office as provided in these Articles. All of the Directors shall be natural persons at least two of whom ordinarily reside in the Commonwealth of Australia. 10
70. The Directors shall have power at any time and from time to time to appoint any other qualified person as a Director either to fill a casual vacancy or as an addition to the Board but so that the total number of Directors shall not at any time exceed the maximum number fixed, by or in accordance with Article 67. But any Director so appointed shall hold office only until the next following annual general meeting of the Company and shall then be eligible for re-election but shall not be taken into account in determining the number of Directors who are to retire by rotation at such meeting. 20
71. The shareholding qualification for Directors may be fixed by the Company in general meeting and unless and until so fixed shall be 1,000 shares.
72. The Directors shall be paid out of the funds of the Company as remuneration for their services such sum

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as may from time to time be determined by the Company in general meeting but until so determined such remuneration shall be such sum as the Directors shall from time to time determine to be divided among the Directors in such proportion and manner as they shall from time to time agree or in default of agreement equally. The remuneration of a Director shall be deemed to accrue from day to day. The Directors shall also be entitled to be paid their reasonable travelling and hotel and other expenses incurred in consequence of their attendance at Board meetings and otherwise in the execution of their duties as Directors. The remuneration of the Directors shall not be increased except at a general meeting and notice of any proposed increase shall be given to members in the notice convening the meeting. Fees payable to a Director or Directors (other than a Managing Director or Managing Directors) shall be a fixed sum and not by a commission on or percentage of profits or turnover.

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73. If any Director being willing shall be called upon to perform extra services or to make any special exertion in going or residing abroad or otherwise for any of the purposes of the Company the Company shall remunerate such Director by a fixed sum as may be determined by the Directors and such remuneration may be either in addition to or in substitution for his share in the remuneration above provided.

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74. The continuing Directors may act notwithstanding any vacancy in their body but so that if the number falls below the minimum above fixed the Directors may act for the purpose of increasing the number of Directors to the minimum or of summoning a general meeting of the Company or in emergencies but for no other purpose.

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75. The office of Director shall become vacant if the Director:-

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- (a) ceases to be a Director by virtue of the Act;
- (b) becomes bankrupt or makes any agreement or composition with his creditors generally;
- (c) becomes prohibited from being a Director by reason of any order made under the Act;
- (d) ceases to hold the required number of shares to qualify him for office;
- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; 10
- (f) resigns his office by notice in writing to the Company;
- (g) be removed by a resolution pursuant to Article 82.
- (h) absents himself from the meetings of the Board for a continuous period of six months without leave of absence from the Board.

DIRECTORS' CONTRACTS WITH COMPANY

76. (1) (a) Subject always to the other provisions of this Article a Director shall not vote in respect of any contract or arrangement in which he has directly or indirectly a personal material interest and if he should do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting but neither of these prohibitions shall apply to - 20
- (i) any arrangement for giving any Director any security or indemnity in respect of money lent by him to or obligations undertaken by him 30

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for the benefit of the Company;
or

(ii) to any arrangement for the giving by the Company of any security to a third party in respect of a debt or obligation of the Company for which the Director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or 10

(iii) any contract or arrangement with any other corporation in which he is interested only as an officer of such other corporation or as the holder of its shares or other securities or any of them. Provided however, that such interest is not a direct or indirect personal material interest of such Director; 20

and these prohibitions may at any time be suspended or released to any extent and either generally or in respect of any particular contract, arrangement or transaction by the Company in General Meeting. 20

(b) A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the Company in which 30

any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established.

- (c) A Director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof. 10
- (d) Any Director may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor of the Company. 20
- (e) A general notice that a Director, alternate Director or Managing Director is a member of or interested in any specified firm or corporation with whom any contract is proposed to be entered into in relation to the affairs of this Company and is to be regarded as interested in all transactions with such firm or corporation shall be a sufficient disclosure under this clause as regards such Director and the said transactions and after such general notice it shall not be necessary for such Director to give any special notice relating to any particular transaction with such firm or corporation. 30

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- (2) A Director of the Company may be or become a Director or other officer of, or otherwise interested in, any corporation promoted by the Company or in which the Company may be interested as shareholder or otherwise, or which holds any shares in the Company, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him as a Director or officer of, or from his interest in, such corporation unless the Company otherwise directs at the time of his appointment. The Directors may exercise the voting power conferred by the shares or other interest in any such other corporation held or owned by the Company, or exercisable by them as Directors of such other corporation in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them Directors or other officers of such corporation) and any Director may vote in favour of the exercise of such voting rights in manner aforesaid, notwithstanding that he may be, or be about to be, appointed a Director or other officer of such corporation and as such is or may become interested in the exercise of such voting rights in manner aforesaid.

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ROTATION OF DIRECTORS

77. At every annual general meeting one-third of the Directors or if their number is not a multiple of three then the number nearest to but not exceeding one-third shall retire from office and be eligible for re-election PROVIDED that subject to Article 86 no Director shall retain office for more than three years without submitting himself for election even though such submission results in more than one-third retiring from office.

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78. The one-third or other nearest number to retire as aforesaid at the annual general meeting of the Company shall unless the Directors agree among themselves be determined by lot; but in every subsequent year the one-third or other nearest number who have been longest in office shall retire. As between two or more who have been in office an equal length of time the Director or Directors to retire shall in default of agreement between them be determined by lot. The length of time a Director has been in office shall be computed from his last election or appointment where he has previously vacated office. A retiring Director shall act as a Director throughout the meeting at which he retires. 10
79. The Company in general meeting may subject to the provisions of these Articles from time to time appoint new Directors and may increase or reduce the number of Directors in office.
80. The Company at any annual general meeting at which any Directors retire in manner aforesaid may fill up the vacated offices by electing a like number of persons to be Directors. 20
81. If at any annual general meeting at which an election of Directors ought to take place the place of any Director retiring by rotation is not filled up he shall if willing continue in office until the annual general meeting in the next year and so on from year to year until his place is filled up unless it shall be determined at such meeting on due notice to reduce the number of Directors in office or unless a resolution for the re-election of such Director shall have been put to the meeting and lost. 30
82. The Company may by ordinary resolution remove any Director before the expiration of his period of office and may by like resolution appoint another qualified

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person in his stead; the person so appointed shall hold office during such time only as the Director in whose place he is appointed would have held the same if he had not been removed.

83. Any casual vacancy occurring among the Directors may be filled up by the Directors but any person so chosen shall retain his office only until the next following annual general meeting of the Company and shall then be eligible for re-election.
84. No person (not being a Director retiring by rotation) shall unless recommended by the Directors for election be eligible for election to the office of Director at any general meeting unless he or some other member intending to propose him has at least eleven clear days before the meeting left at the office a notice in writing duly signed by the nominee giving his consent to nomination and signifying his candidature for the office or the intention of such member to propose him PROVIDED ALWAYS that in the event of a person being recommended by the Directors for election nine clear days' notice only shall be necessary. Notice of each and every candidature shall at least seven days previously to the meeting at which an election is to take place be forwarded to all registered holders of shares.

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MANAGING DIRECTORS

85. The Directors may from time to time appoint one or more of their body to be Managing Director or Managing Directors of the Company for a fixed term not exceeding five years and may from time to time (subject to the provisions of any contract between him or them and the Company) remove or dismiss him or them from office and appoint another or others in his or their place or places.

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26. A Managing Director shall not while he continues to hold that office be subject to retirement by rotation and he shall not be taken into account in determining the rotation of retirement of Directors or the number of Directors to retire but he shall be subject to the provisions of any contract between him and the Company be subject to the same provisions as to resignation and removal as the other Directors of the Company and if he ceases to hold the office of Director from any cause he shall ipso facto and immediately cease to be a Managing Director. 10

27. The remuneration of a Managing Director shall from time to time be fixed by the Directors and may be by way of fixed salary or commission on dividends or profits of the Company or of any other company in which the Company is interested or by participation in any such profits or by any or all of those modes but shall not be by way of commission on or percentage of turnover.

28. The Directors may from time to time entrust to and confer upon a Managing Director for the time being such of the powers exercisable under these presents by the Directors as they may think fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf; and may from time to time revoke withdraw alter or vary all or any of such powers. A Managing Director shall be subject to the control of the Board of Directors of the Company. 20 30

PROCEEDINGS OF DIRECTORS

29. The Directors may meet together for the despatch of business adjourn and otherwise regulate their meetings and proceedings as they think fit and may determine the

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quorum necessary for the transaction of business. Until otherwise determined by the Directors two Directors shall form a quorum. Directors' meetings shall not be held outside the Commonwealth of Australia or its Territories except with the consent of all the Directors.

90. A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of the Directors. Each Director and Alternate Director shall be entitled to receive notice of a meeting of Directors.

91. Any instrument appointing an Alternate Director shall as nearly as circumstances will admit be in the following form or to the effect of the following:-

10

FORSAYTH MINERAL EXPLORATION N. L.

I the undersigned being a Director of the abovenamed Company in pursuance of the power in that behalf contained in the Articles of Association of the Company DO HEREBY NOMINATE AND APPOINT

of
to act as Alternate Director in my place and to exercise and discharge all my duties as a Director.

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Signed this day of 19 .

or in such other form as the Directors may from time to time prescribe or approve or in particular cases accept.

92. Questions arising at any meeting of the Directors shall be decided by a majority of votes and subject to the provisions of Article 76 each Director shall have one vote. A person who is an Alternate Director shall be entitled (in addition to his own vote if he is a Director) to one vote on behalf of each Director whom he represents as an Alternate Director at the meeting

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and who is not personally present. In case of an equality of votes provided more than two Directors present are competent to vote on the question at issue but not otherwise the Chairman shall have a second or casting vote.

93. The Directors may elect one of their number to be Chairman of their meetings and determine the period for which he is to hold office and unless otherwise determined the Chairman shall be elected annually. If no Chairman is elected or if at any meeting the Chairman is not present within half an hour of the time appointed for holding the same the Directors present shall choose some one of their number to be Chairman of such meeting. The Directors may from time to time appoint a deputy Chairman who in the absence of the Chairman at a meeting of the Directors may exercise all the powers and authorities of the Chairman. 10
94. A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities powers and discretions by or under the regulations of the Company for the time being vested in or exercisable by the Directors generally. 20
95. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit and may from time to time revoke such delegation. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the Directors. Save as aforesaid, the meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions contained for regulating the meetings and proceedings of the Directors. 30

96. All acts done at any meeting of the Directors or of a committee of Directors or by any person acting as a Director shall notwithstanding that it shall afterwards be discovered that there was some defect in the appointment or continuance in office of such Director or person acting as aforesaid or that they or any of them were disqualified or were not entitled to vote be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director and was entitled to vote.

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97. A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more Directors.

ALTERNATE DIRECTORS

98. Each Director shall have power from time to time to appoint any person (not being an Auditor or a partner or employer or employee of an Auditor of the Company) approved for that purpose by a majority of the other Directors to be an Alternate Director in his place during such times and from time to time as he shall appoint and shall have power at his discretion to remove such Alternate Director. An Alternate Director may act in the place of the Director who appointed him and shall be entitled to attend and vote at any meeting of the Directors except while the Director who appointed him is present and shall have all the rights and powers and be subject to the duties of the Director he represents and shall be subject in all respects to the conditions existing with reference to the other Directors except that he shall not be entitled to be remunerated otherwise than out of the remuneration of the

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Director who appointed him. In respect of such remuneration (if any) the rights of the Alternate Director shall be against the Director who appointed him only and not against the Company. An Alternate Director shall be an officer of the Company and shall not be deemed to be the Agent of the Director appointing him. If any Director who has for the time being an Alternate Director shall cease to be a Director the Alternate Director shall thereupon cease to be an Alternate Director provided however that when a Director retires at an Annual General Meeting either by rotation or otherwise pursuant to these Articles and is re-appointed as a Director at such meeting, his Alternate Director (if any) shall not ipso facto cease to be an Alternate Director unless the instrument appointing him as an Alternate Director otherwise provides.

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MINUTES

99. The Directors shall cause minutes to be duly entered in books provided for the purpose:-

(a) of all appointments of officers;

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(b) of the names of the Directors present at each meeting of the Directors and of any committee of Directors;

(c) of all orders made by the Directors and committees of Directors;

(d) of all resolutions and proceedings of general meetings and of meetings of the Directors and committees;

(e) of all declarations made or notices given by any Director pursuant to Section 123 of the Act.

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Such minutes shall be signed by the Chairman of such meeting or by the Chairman of the next succeeding

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meeting and if purporting to be so signed all such minutes shall be evidence of the matters stated in such minutes.

100. The books containing the minutes of the general meetings of the Company shall be kept at the registered office or the principal place of business of the Company and shall be open to the inspection of any member without charge. Any member shall be entitled to be furnished within seven days after he has made a request in that behalf with a copy of any such minutes at a charge not exceeding twenty cents for every hundred words. 10

POWERS OF DUTIES OF DIRECTORS

101. The business of the Company shall be managed by the Directors who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not by the Act or by these regulations required to be exercised by the Company in general meeting subject nevertheless to any of these regulations to the provisions of the Act and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made. 20
102. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking property and uncalled capital or any part thereof and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the Company or of any third party. 30

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103. The Directors may exercise all the powers of the Company in relation to any official seal for use outside the State and in relation to branch registers.
104. The Directors may from time to time by power of attorney appoint any corporation firm or person or body of persons whether nominated directly or indirectly by the Directors to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the Directors under these regulations) and for such period and subject to such conditions as they may think fit and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him. 10
105. Any sale or disposal by the Directors of the Company's whole undertaking or of the Company's main undertaking shall be subject to ratification by the Company in general meeting. 20

SECRETARY

106. A Secretary or Secretaries shall in accordance with the Act be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. The Directors may also at any time appoint a person as an Acting Secretary or as a temporary substitute for a Secretary who shall for the purpose of these Articles be deemed to be a "Secretary." 30

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LOCAL MANAGEMENT

107. The Directors may from time to time provide for the management and transaction of the affairs of the Company in any specified locality whether at home or abroad in such manner as they shall think fit and the provisions contained in the four next following Articles shall be without prejudice to the general powers conferred by this paragraph.
108. The Directors from time to time and at any time may establish any local boards or agencies for managing any of the affairs of the Company in any such specified locality and may appoint any persons to be members of such local board or any managers or agents and may fix their remuneration. And the Directors from time to time and at any time may delegate to any person so appointed any of the powers authorities and discretions for the time being vested in the Directors other than the power of making calls and may authorise the members for the time being of any such local board or any of them to fill up any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any person so appointed and may annul or vary any such delegation but no person dealing in good faith and without notice of such annulment or variation shall be affected thereby. 10 20
109. An appointment of an attorney made under Article 104 may (if the Directors think fit) be made in favour of the members or any of the members of any local board established as aforesaid or in favour of any company or of the members Directors nominees or managers of any company or firm or in favour of any fluctuating body of persons whether nominated directly or indirectly by the Directors; 30

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and any such powers of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney or attorneys as the Directors may think fit.

110. Any such delegates or attorneys as aforesaid may be authorised by the Directors to sub-delegate all or any of the authorities and discretions for the time being vested in them.

BRANCH REGISTERS

111. The Company may cause to be kept in any country State Territory or colony outside the State a branch Register of members and the Directors may from time to time make such provisions as they (subject to the Act) may think fit respecting the keeping of any such branch Register and the Directors may from time to time make such provisions as they may think fit relating thereto and may comply with the requirements of any local law. Every such branch Register shall be audited at intervals of not more than three months. 10
112. The Company may exercise the powers conferred by Sections 35 and 157 of the Act and such powers shall accordingly be vested in the Directors. 20

SEALS

113. (a) (i) The Directors shall provide a Common Seal for the Company and shall provide for the safe custody of that seal which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that behalf

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and every instrument to which the Common Seal shall be affixed shall be subject to any contrary provision contained in or provided for by Article 11 and this Article be signed by two Directors or by one Director and the Secretary or by some other person appointed by the Directors for the purpose.

- (ii) The Company is hereby authorised pursuant to Section 93 of the Act to have a duplicate Common Seal, known as the Share Seal, which shall be a facsimile of the Common Seal with the addition on its face of the words "Share Seal." Any certificate for shares may be issued under the share seal and if so issued shall be deemed to be sealed with the Common Seal. 10
- (iii) Subject to the following provisions of this Article the signatures required by paragraph (i) hereof on a document to which the Common Seal is affixed may be imposed by some mechanical means. 20
- (iv) Subject to the following provisions of this Article the Directors may determine the manner in which the Share Seal shall be affixed to any document and by whom a document to which the Share Seal is affixed shall be signed and whether any signature so required on such a document must be actually written thereon or whether it may be imposed by some mechanical means PROVIDED THAT to the extent to which the Directors have not otherwise determined a document to which the Share Seal is affixed shall not be required to be signed by any person except as may be necessary for compliance with paragraph (vi) of this Article. 30

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- (v) The only documents on which the Share Seal may be used shall be Share or Stock Unit Certificates, Debentures or Certificates of Debenture Stock, Secured or Unsecured Notes, Option Certificates and any Certificates or other documents evidencing any options or rights to take up any shares in or Debenture Stock or Debentures or Notes of the Company.
- (vi) Signatures shall not be imposed by mechanical means nor (except when the requirements of paragraph (i) of this Article as to signatures are complied with) shall the Share Seal be used on any Certificate or other document mentioned in paragraph (v) of this Article, unless such certificate or other document has first been approved for sealing or signature (as the case may be) by the Board or other authorised person or persons and bears evidence of examination by the Auditors or the Share Register Auditors of the Company. 10
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- (b) The Company may have for use in any place outside New South Wales an Official Seal which shall be a facsimile of the Common Seal of the Company with the addition on its face of the name of the place where it is to be used and the following provisions shall have effect:-
- (i) The Company may by writing under its Common Seal authorise any person appointed for that purpose in the relevant place not situated in New South Wales to affix its official seal for such place to any deed or other document to which the Company in such place is a party. 30
- (ii) The authority of any such agent shall as between the Company and any person dealing with the agent continue during the period (if any) mentioned in the instrument

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conferring the authority or if no period is therein mentioned then until notice of the revocation or termination of the agent's appointment shall have been given to the person dealing with him.

- (iii) The person affixing any such official seal shall by writing under his hand on the deed or document to which the seal is affixed certify the date and place of affixing the same.. 10
- (iv) A deed or other document to which any such official Seal is duly affixed shall bind the Company as if it had been sealed with the Common Seal of the Company.
- (c) Cheques or other negotiable instruments paid to the Company's bankers for collection and requiring the endorsement of the Company may be endorsed on its behalf by any Director or by the Secretary or such other person as may from time to time be appointed for that purpose by the Directors. All moneys belonging to the Company shall be paid to such bankers as the Directors shall from time to time in writing or by resolution of the Directors appoint and all receipts for money paid to the Company shall be signed by the Secretary or such other person as aforesaid and such receipt shall be an effectual discharge for the money therein stated to be received. 20
- (d) Any instrument bearing the Common Seal of the Company or an official Seal or sealed in respect of the documents referred to in and in accordance with paragraphs (a) (v) and (vi) of this Article shall if issued for valuable consideration be binding on the Company notwithstanding any irregularity touching the authority of the Directors to issue the same or the circumstances of its issue. 30

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BILLS, CHEQUES, ETC.

114. All bills of exchange promissory notes or other negotiable instruments shall be accepted made drawn or endorsed for and on behalf of the Company and all cheques or orders for payment shall be signed in such manner as the Directors may from time to time prescribe.

RESERVES

115. The Directors may before recommending any dividend or at any time write off such sum as they think proper for depreciation and may set aside out of the profits of the Company such sums as they think proper as a reserve fund which shall at the discretion of the Directors be applicable for meeting contingencies for the gradual liquidation of any debt or liability of the Company for repairing improving and maintaining any of the property of the Company and for such other purposes as the Directors shall in their absolute discretion think conducive to the interests of the Company. The Directors may divide the reserve fund into such special funds as they think fit with full power to employ the assets constituting the reserve fund or part thereof in the business of the Company (and that without being bound to keep the same separate from the other assets) and/or may invest the same from time to time upon such securities as they may select subject to Article 7 (b) hereof with power to deal with and vary such investments and dispose of all or any part thereof for the benefit of the Company as they think fit.

DIVIDENDS

116. Subject to any special rights relating thereto created or authorised to be created by these presents and

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subject to the provisions of these presents as to reserves the profits of the Company shall be divisible among the members in proportion to the shares held by them respectively irrespective of the amount paid up or credited as paid up thereon. If any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

117. The Company in general meeting may from time to time declare dividends but no dividend shall exceed the amount recommended by the Directors. The dividend shall be payable on the date fixed by the resolution sanctioning it or if not so fixed shall be payable on the date fixed by the Directors. 10
118. No dividend shall be paid otherwise than out of profits and a declaration by the Directors as to the amount of profits available for dividends shall be conclusive.
119. No dividend or other moneys payable on or in respect of a share shall bear interest against the Company.
120. The Directors may from time to time declare such interim dividends as in their judgment the position of the Company justifies. Each interim dividend so declared shall be payable on a date fixed by the Directors and in accordance with Article 116. The Directors may also pay any preferential dividends on shares issued upon the terms that the preferential dividends thereon shall be payable on fixed dates. The payment of any such preferential dividend or interim dividend shall not require the sanction of a General Meeting. 20
121. The Directors or any general meeting when declaring a dividend may resolve that such dividend be paid wholly or in part by the distribution of specific assets and in particular of paid up shares debentures or debenture 30

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stock of the Company or paid up shares debentures or debenture stock of any other company or in any one or more of such ways.

122. The Company in general meeting may upon the recommendation of the Directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on conditions that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the Company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid or partly in the one way and partly in the other and the Directors shall give effect to such resolution. A share premium account and a capital redemption reserve fund may for the purposes of this regulation only be applied in the paying up of unissued shares to be issued to members of the Company as fully paid bonus shares. 10
123. Whenever such a resolution as aforesaid shall have been passed the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully-paid shares or debentures if any and generally shall do all acts and things required to give effect thereto with full power to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions and also to authorise any person to enter on behalf of all the members entitled thereto into an 20
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agreement with the Company providing for the allotment to them respectively credited as fully paid up of any further shares or debentures to which they may be entitled upon such capitalisation or (as the case may require) for the payment up by the Company on their behalf by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts or any part of the amounts remaining unpaid on their existing shares and any agreement made under such authority shall be effective and binding on all such members.

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124. A transfer of shares shall not pass the right to any dividend declared thereon before the registration of the transfer.

125. The Directors may retain the dividends payable upon shares in respect of which any person is under the transmission clause entitled to become a member or which any person under that clause is entitled to transfer until such person shall become a member in respect of such shares or shall duly transfer the same.

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126. Any one of several persons who are registered as the joint holders of any shares may give effectual receipts for all dividends and payments on account of dividends bonuses or other moneys payable in respect of such shares but the Directors may if they think fit require the receipt of all the holders of such shares.

127. Unless otherwise directed any dividend may be paid by cheque sent through the post to the registered address of the member or person entitled or in the case of joint holders to the registered address of that one whose name stands first on the register in respect of the joint holding.

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ACCOUNTS

128. The Company and the Directors shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the Company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time and shall cause such records to be kept in such manner as to enable them to be conveniently and properly audited. 10
129. At the annual general meeting in every year the Directors shall lay before the Company a report profit and loss account and balance sheet together with the Auditor's report made up to a date not more than six months before the date of the meeting for the period since the preceding account. Such report profit and loss account and balance sheet shall comply with the provisions of Section 161 and 162 of the Act. The interval between the close of a financial year of the Company and the issue of accounts relating to it shall not exceed four months. 20
130. A copy of every profit and loss account and balance sheet (including every document required by law to be attached thereto) which is to be laid before the Company in general meeting together with a copy of the Auditor's report thereon shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings and four copies thereof shall at the same time be forwarded to every Stock Exchange upon which any of the shares of the Company are for the time being listed. 30

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131. Any member of the Company shall be entitled to be furnished on demand without charge with a copy of the last profit and loss account and balance sheet of the Company (including every document required by law to be attached thereto) together with a copy of the Auditor's report thereon.

AUDIT

132. The Company at each annual general meeting shall appoint an Auditor to hold office until the next annual general meeting and the appointment remuneration rights and duties of such Auditor shall be regulated by the Act. 10
133. No person shall be appointed or shall act as Auditor for the Company if he is or becomes:-
- (a) an officer or employee of the Company or of any holding or subsidiary company or of any other subsidiary company of the same holding company;
 - (b) a partner employer or employee of any such officer or employee of the Company;
 - (c) a partner or employee of any such employee or an officer; or 20
 - (d) indebted to the Company in an amount exceeding One thousand dollars.
134. If and whenever the Auditor of the Company furnishes a qualified report which in the opinion of such Auditor ought to be made known to the members of the Company copies of such qualified report shall forthwith be supplied by the Directors to every Stock Exchange upon which any of the shares of the Company are for the time being listed.

135. Every account of the Directors when audited and approved by a general meeting shall be conclusive except as regards any error discovered therein within three months next after the approval thereof. Whenever any such error is discovered within that period the account shall forthwith be corrected and thenceforth shall be conclusive.

NOTICES

136. Subject to these Articles a notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter envelope or wrapper addressed to such member at his registered place of address. A notice convening a meeting shall specify the place and hour of the meeting. Notice of any meeting of the Company called to pass any resolution shall be accompanied by a statement clearly showing the effect of such resolution. 10
137. Each holder of registered shares whose registered place of address is not in the Commonwealth of Australia may from time to time notify in writing to the Company an address in the Commonwealth of Australia which shall be deemed his registered place of address within the meaning of the last preceding clause. 20
138. It shall not be necessary to give notice of meetings to any person entitled to a share by transmission unless such person shall have been duly registered as a member of the Company.
139. All notices shall with respect to any registered shares to which persons are jointly entitled be given to whichever of such persons is first named in the register and notice so given shall be sufficient notice to all the holders of such shares. 30

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140. Any notice sent by post shall be deemed to have been served on the day following that on which the letter envelope or wrapper containing the same is posted and in proving such service it shall be sufficient to prove that the letter envelope or wrapper containing the notice was properly addressed and put into the post office or other public postal receptacle. A certificate in writing signed by any Manager Secretary or other officer of the Company that the letter envelope or wrapper containing the notice was so addressed and posted shall be conclusive evidence thereof. 10
141. Every person who by operation of law transfer or other means whatsoever shall become entitled to any share shall be bound by every notice in respect of such shares which previously to his name and address being entered on the register shall be duly given to the person from whom he derives his title and to every previous holder thereof.
142. Any notice or document sent by post to or left at the registered address of any member in pursuance of these presents shall notwithstanding such member be then deceased or shall be in any way incapacitated and whether or not the Company has notice of his decease or incapacity be deemed to have been duly served in respect of any registered shares whether held solely or jointly with other persons by such member until some other person be registered in his stead as the holder or joint holder thereof and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his heirs executors or administrators and all persons (if any) jointly interested with him in any such share. 20
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143. The signature to any notice to be given by the Company may be written or printed.

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PAYMENTS BY THE COMPANY

144. Wherever in respect of any shares registered as held either jointly or solely by any member or otherwise in connection with the holding whether joint or sole of any member and whether in consequence of the death of such member or for any other reason any law for the time being of the Commonwealth of Australia or of any Australian State or of any other country or place shall impose or purport to impose any immediate or future or possible liability upon the Company to make any payments to any Government or taxing authority the Company shall in respect of any such liability be fully indemnified by such member or his executors administrators or assigns wheresoever situated. Any moneys paid by the Company in respect of any liability imposed or purported to be imposed on the Company as aforesaid may be recovered by action from such member or his executors or administrators wheresoever situated as a debt due by such member or his estate to the Company with interest at the rate determined by the Directors but not exceeding ten dollars per centum per annum from the date when such moneys were so paid until repayment. In respect of any of its rights to be indemnified or to be repaid as herein declared the Company shall have a lien upon the shares and all dividends bonuses and other moneys payable on or in respect of the shares registered as held either jointly or solely by such member as aforesaid in respect of any such payment by the Company as aforesaid any such law as aforesaid may confer or purport to confer upon the Company and it is hereby expressly declared that as between the Company and such member or his estate or his executors administrators or assigns wheresoever situated any such right or remedy shall be enforceable by the Company.
- 10
- 20
- 30

51.

Exhibits.
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WINDING UP

145. (a) If the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital, such assets shall be distributed so that as nearly as may be the losses shall be borne by the members in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively. And in a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed among the members in proportion to the capital at the commencement of the winding up, paid up or which ought to have been paid up on the shares held by them respectively. But this Article is to be without prejudice to the rights of the holders of shares issued upon special terms and conditions. 10 20
- (b) If the Company shall be wound up whether voluntarily or otherwise the liquidators may with the sanction of a special resolution divide among the shareholders in specie or kind any part of the assets of the Company and may with the like sanction vest any part of the assets of the Company in trustees upon such trusts for the benefit of the shareholders or any of them as the liquidators with the like sanction shall think fit. 30
- (c) In case any shares to be divided as aforesaid involve a liability to calls or otherwise any person entitled under such division to any of the said shares may within ten days after the passing of the special resolution by notice in writing direct the liquidators to sell his proportion and

pay him the net proceeds and the liquidators shall if practicable act accordingly.

- (d) No commission or fee shall be payable to a Director or Directors or the liquidators unless the payment of such commission or fee shall have been ratified by a general meeting of the Company and the amount of such proposed payment shall have been specified in the notice calling such meeting.

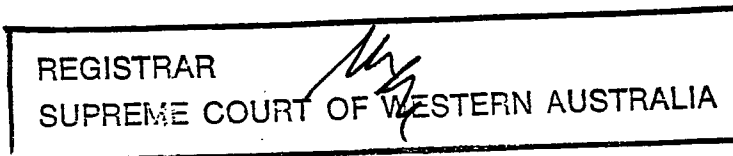
146. If the Company ceases to carry on business within twelve months of its incorporation or if an order is made for the winding up of the Company or if it is resolved by special resolution to wind up the Company within twelve months of the shares of the Company being quoted for the first time on any Stock Exchange, shares issued for cash to members of the public shall rank in priority to share capital issued to Vendors or Promoters or both whether for cash or a consideration other than cash. 10

INDEMNITY

20

147. Subject to the provisions of Section 133 of the Act every Director, Manager, Officer or Auditor of the Company or any person (whether an officer of the Company or not) employed by the Company shall be indemnified out of the funds of the Company against all liability incurred by him as such Director, Manager, Officer, Auditor or person in defending any proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under Section 365 of the Act, in which relief is granted to him by the Court. 30
148. No Auditor or Director or other officer of the Company shall be liable for the acts receipts neglects or

53.



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defaults of any other Director or Officer or for joining in any receipt or other act for conformity or for any loss or expense happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors or on behalf of the Company or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested or for any loss or damage arising from the bankruptcy insolvency or tortious act of any person with whom any moneys securities or effects shall be deposited or for any loss occasioned by any error of judgment omission default or oversight on his part or for any other loss damage or misfortune whatever which shall happen in relation thereto unless the same happen through his own negligence default breach of duty or breach of trust.

10

COMPANY'S POWERS

149. The Company is hereby authorised to do anything which in accordance with the provisions of the Act a Company may do if so authorised by its Articles.

20

MEMBERS NOT ENTITLED TO DISCOVERY

150. No member shall be entitled to require discovery of or any information respecting any detail of the Company's trading or any matter which is or may be in the nature of a trade secret, mystery of trade or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Directors it will be inexpedient in the interests of the members of the Company to communicate.

54.

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151. WE, the several persons whose names are subscribed being the subscribers to the Memorandum of Association hereby agree to the foregoing Articles of Association.

Signatures of Subscribers	Signatures and Addresses of Witnesses
Z.D. BURGER	C. GARDINER, 720 George St., SYDNEY. Clerk. 10
ERWIN KATZ	C. GARDINER, 720 George St., SYDNEY.
MORRIS MOSS	C. GARDINER, 720 George Street, SYDNEY.
R.S. THOMSON	PAULA DONNELLEY, Articled Law Clerk, 4 Bridge St., SYDNEY. 20
K.W. DRAPER	PAULA DONNELLEY, Articled Law Clerk, 4 Bridge St., SYDNEY.

DATED this 4th day of December, 1969.

55.

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Forsyth Oil & Gas NL

(Incorporated in New South Wales)

1st FLOOR ELDER HOUSE, 111 ST GEORGE'S TERRACE, PERTH W.A. 6000
TELEPHONE (09) 422 1266 TELEFAX AA 949 16

Notice of Meeting

Dear Shareholder

Attached you will find a formal notice of the Annual General Meeting scheduled to be held on Tuesday, 15th March, 1983.

In addition to the review and approval of the Annual Report and financial statements of the Company the notice provides for additional ordinary and special resolutions which are believed to be in the best interests of the Company.

As an exploration company, Forsyth Oil & Gas N.L. has expended capital raised on both mineral and petroleum exploration. The total share capital on issue has become disproportionately higher than the asset backing attributable hereto.

Our directors have therefore resolved to restructure the capital base of your Company subject to obtaining shareholder approval and subject to the Supreme Court ratifying the restructure.

The resolutions have the effect of writing off lost capital not represented by available assets.

The presently issued 112,389,727 fully paid shares of \$1.00 will become 11,238,973 fully paid shares of 25 cents each. The same will apply to any shares issued by way of the conversion of options prior to the date of the restructure.

Similarly the presently issued 3,148,018 contributing shares of \$1.00 paid to 62 cents will become 314,802 contributing shares of 25 cents each paid to 16 cents and the 21,312,577 contributing shares of \$1.00 paid to 60 cents and forfeited through non-payment of calls become 2,131,358 contributing shares of 25 cents paid to 15 cents cancelled through non-payment of calls.

The net effect can possibly be best expressed in the form of the following example:

Current Holding	Restructured Holding
10,000 fully paid \$1.00 shares	1,000 fully paid 25 cent shares
5,000 contributing \$1.00 shares paid to 62 cents	500 contributing 25 cent shares paid to 16 cents

As the reconstruction of the contributing shares presently paid to 62 cents results in a fraction, it has been resolved to round the fraction up to the next whole cent. Accordingly, following reconstruction, the 25 cent contributing shares will be deemed paid to 16 cents each. Your directors have elected to complete the reconstruction in this way so as not to disadvantage contributing shareholders in the proposed reduction of capital and subdivision of shares.

Shareholders will also be asked to authorise the Company to offer option holders a new option in lieu of those presently held. Option holders are to be offered one new option to acquire one fully paid 25 cent share at an exercise price of 20 cents per option for every ten options to acquire \$1.00 fully paid shares currently held. The expiry date of this new option will be the 31st December, 1985 so that the option holders are not disadvantaged by the capital restructure. The conversion price of the options to be issued has been adjusted to comply with current Stock Exchange Listing Requirements.

The capital reconstruction is as stated entirely dependent upon shareholder approval and the subsequent approval of the Supreme Court.

Upon receiving these approvals shareholders will be sent a circular advising them of the approval and requesting the return of share certificates which will need to be replaced. 10

The directors recommend that you endeavour to attend the Annual General Meeting and look forward to discussing these resolutions with you and if you are unable to attend in person, we would appreciate your support by completing and returning the attached proxy form ensuring that it is received by the Company no later than forty-eight hours before the time of the holding of the meeting.

J. C. MORRIS
Chairman

20

NOTICE IS HEREBY GIVEN that the Annual General Meeting of members of Forsyth Oil and Gas N.L. will be held at the 1st Floor, 111 St. George's Terrace, Perth, Western Australia on Tuesday, 15th March, 1983 at 10.00 a.m.

GENERAL BUSINESS

(1) To consider and adopt the Balance Sheet as at the 30th September, 1982, Profit and Loss Statement for the year then ended together with the reports of the Directors and Auditors therein. 30

(2) To elect directors

(a) John Graydon Eddy retires in accordance with the Articles of Association of the Company and being eligible, offers himself for re-election.

(b) Trevor William Tyson being eligible and having been nominated offers himself for election.

(c) Ronald Graham Pemberton resigns as a director and does not seek re-election.

(3) To transact any further business that may be legally brought forward. 40

SPECIAL BUSINESS

To consider and if thought fit to pass the following resolutions with or without modification.

AS SPECIAL RESOLUTIONS

(1) Subject to the confirmation of the Supreme Court of New South Wales and pursuant to Section 12.011 of the Companies (New South Wales) Code ("the Code") and as authorised by Article 34 of the Articles of Association the share capital of the Company be reduced from \$200,000,000.00 divided into 50 200,000,000 shares of \$1.00 each to \$20,000,000.00 divided into 80,000,000 shares of 25 cents each.

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Exhibits.

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Forsyth Oil & Gas NL

(Incorporated in New South Wales)

- (5) That subject to the passing of resolution (4) above by the shareholders that the Memorandum of Association of the Company be amended by deleting the existing Clause 4 and inserting:

"The share capital of the Company is \$20,000,000.00 divided into 80,000,000 shares of 25 cents each. The shares in the original or any increased or reduced capital may be divided into several classes and there may be attached to the shares whether original or otherwise respectively any preferential qualified special or deferred rights privileges and disabilities or conditions and any of such shares for the time being unissued may from time to time be issued with any such rights whether in respect of dividend or repayment of capital or both or any such special privilege over any shares previously issued or then about to be issued or with such deferred rights disabilities or conditions as compared with any other shares previously issued or then about to be issued and with any special or restricted rights or without any right of voting and generally on such terms and subject to such conditions and provisions as may from time to time be determined in accordance with the Articles of Association of the time being in force."

- (6) Subject to the passing of resolutions (4) and (5) above and the confirmation of the Supreme Court of New South Wales and pursuant to Articles 34 and 35 of the Articles of the Company and Section 123 of the Code the paid up capital of the Company be reduced from \$127,129,644.36 (comprising 112,389,727 fully paid shares of \$1.00 each; 3,148,018 contributing shares of \$1.00 paid to 62 cents each and 21,313,577 contributing shares of \$1.00 paid to 60 cents and forfeited through non-payment of calls) to \$3,179,815.13 (comprising 11,238,973 fully paid shares of 25 cents each; 314,802 contributing shares of 25 cents paid to 16 cents each and 2,131,358 contributing shares of 25 cents paid to 15 cents and forfeited through non-payment of calls) by cancelling the sum of \$123,949,829.23 being paid up capital which is lost and is also unrepresented by available assets to the extent of 0.975 cents per share on each of the fully paid shares (total \$109,579,983.82 and to the extent of 0.604 cents per share on each of the partly paid shares (total \$1,901,402.87) and to the extent of 0.585 cents per share on each of the forfeited shares (total \$12,468,442.54)

- (7) That the directors be authorised to apply on behalf of the Company to the National Companies and Securities Commission for a certificate authorising the Company to make an application under the provisions of the law in force in Western Australia, for transfer of incorporation of the Company to Western Australia

AS ORDINARY RESOLUTIONS

- (8) That the directors be authorised to place at their discretion before the expiration of three months from the date of the Supreme Court of N.S.W. approving resolutions (4), (5) and (6) above, up to 5,000,000 fully paid shares of 25 cents each and 5,000,000 options to subscribe for fully paid 25 cent shares exercisable at 20 cents each on or before the 31st December, 1985 (subject to resolutions (4), (5) and (6) being passed and approved by the Supreme Court) either in part or whole at a price not less than 80% of the market price at the time of the placement. 10
- Any such placement or placements will be made by clients of any member firm of a recognised Stock Exchange or to institutional investors. 20
- (9) Subject to the passing of resolutions (4), (5), (6) and (8) set out above, that the holders of options granted by the Company to purchase fully paid \$1.00 shares in the Company on or before the 1st June, 1984 at an exercise price of 25 cents be offered one option to acquire one fully paid 25 cent share exercisable on or before the 31st December, 1985 at an exercise price of 20 cents per option for every ten options currently held and where as a result of the foregoing any option holder becomes entitled to a fraction of an option to acquire a fully paid 25 cent share such option holder receive one option exercisable on or before the 31st December, 1985 at an exercise price of 20 cents to purchase a fully paid share in respect of that fraction. 30

By order of the Board

K. LANGE
Secretary 40

Dated at Perth in the State of Western Australia this 3rd day of February, 1983.

FORSAYTH OIL AND GAS N.L.

INCORPORATED IN NEW SOUTH WALES UNDER "THE COMPANIES ACT" 1961 AS AMENDED

REGISTERED OFFICE: 7TH FLOOR, PENFOLD HOUSE, 86-88 PITT STREET, SYDNEY, N.S.W. 2000
HEAD OFFICE: 9TH FLOOR, ELDER HOUSE, 111 ST. GEORGES TERRACE, PERTH, W.A. 6000
SHARE REGISTRY: CAPITAL SHARE REGISTRY PTY. LTD. 17TH FLOOR,
111 ST. GEORGES TERRACE, PERTH, W.A. 6000

Holding

RECALL OF CERTIFICATES

Dear Shareholder,

We refer to the Notice of Annual General Meeting and advise that the resolutions for capital reconstruction and reduction were approved by the members on March 15, 1983. 10

The capital reduction provided for the Company's issued capital of 112,389,727 fully paid shares of \$1.00 each to become 11,238,973 fully paid shares of 25 cents each; the 3,148,018 contributing shares of \$1.00 each paid to 62 cents to become 314,802 contributing shares of 25 cents each paid to 16 cents, and the 21,313,577 contributing shares of \$1.00 each and forfeited through non payment of calls to become 2,131,358 contributing shares of 25 cents each paid to 15 cents and forfeited through non payment of calls.

To exemplify the effect of the reconstruction, if your current holding is 10,000 fully paid \$1.00 shares and 5,000 contributing \$1.00 shares paid to 62 cents each, then your restructured holding will become 1,000 fully paid 25 cent shares and 500 contributing 25 cent shares paid to 16 cents each. 1

In addition, the holders of options to purchase one fully paid \$1.00 share in the Company on or before June 1, 1984, at an exercise price of 25 cents per option are hereby offered one option, for every ten options currently held, to purchase one fully paid 25 cent share, exercisable on or before December 31, 1985 at an exercise price of 20 cents per option. 2

The capital reduction was approved by the Supreme Court of New South Wales and is effective from May 16, 1983. The reconstructed deferred delivery share capital will be quoted on the Australian and Associated Stock Exchanges as from June 10, 1983. 20

As a result of the reconstruction, please arrange to return to the Company's share registrar the share certificates listed below, using the self addressed envelope provided. Upon receipt, new certificates will be forwarded to you. You are requested to return ALL certificates even though the share certificate numbers listed hereunder do not agree with the number of certificates actually held. If any of the certificates have been lost or mislaid, please complete the Statutory Declaration on the back of this letter and return to the share registrar at the address which appears above. Arrangements will be made to issue replacement certificates.

Please check the name and address details as shown above carefully and if any changes are to be made, advise us in writing over your signature. Your prompt attention to the foregoing is requested. 30

Yours faithfully
FORSAYTH OIL & GAS N.L.

J.P. SMITH
COMPANY SECRETARY

STATUTORY DECLARATION

I
of
do solemnly and sincerely declare:

1. That certificate (s) No. (s)
for shares in
..... have been lost, destroyed
or mislaid:

2. That I have made proper searches for the said certificate (s) and that I have not
sold the shares nor charged the shares as security to any person or otherwise 10
dealt with such shares as to give a third party any right interest or title to the
shares comprised in the aforesaid certificate (s).

3. That should the aforesaid certificate (s) be found, I will immediately forward
it/them to the company for the purpose of cancellation.

4. In consideration for the issue of a replacement certificate (s), I hereby undertake
to indemnify the company and the Directors thereof against all loss, damages,
claims and expenses that may be made against the company or the Directors
thereof in consequence of the issue of such additional certificate (s).

AND I make this solemn declaration by virtue of *
conscientiously believing the statements contained in this declaration to be true in every 20
particular.

Declared at the day of
..... 19

Before me

Justice of the Peace

*New South Wales: Oaths Act, 1900
Queensland: Oaths Act of 1867
Western Australia: The Evidence Act, 1904
Tasmania: Evidence Act 1910
Northern Territory: The Oaths Act*

*Victoria: An Act of the Parliament of Victoria
South Australia: The Oaths Act, 1936
Commonwealth of Australia: the Statutory Declarations Act
1959*

Livia Pty. Ltd.,
21 Howard Street,
PERTH WA 6000

13th April, 1984.

The Company Secretary,
Forsayth Oil & Gas N.L.,
Griffin Centre,
The Esplanade,
PERTH, W.A. 6000.

Dear Sir,

10

Enclosed please find documentation effecting the transfer to this Company of 1,272,170 assignable June '84 options over unissued \$1 shares in your Company.

Please register these transfers and return certificates for such options to Livia Pty. Ltd.

Yours faithfully,


J.D. COCHRANE
DIRECTOR

(

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F

FORSAYTH OIL AND GAS N.L.

(Incorporated in Western Australia)

Incorporated in New South Wales

May 9, 1984

Livia Pty Ltd
21 Howard Street
PERTH WA 6000

Attention : Mr. J. Cochrane

Dear Sir:

RE: OPTIONS

10

We refer to your letters dated 3rd and 7th May 1984.

The Company is attending immediately to have Livia registered as the transferee of the relevant options.

As a result of the reduction in capital of the Company passed by Special Resolution at the Annual General Meeting of the Company held on 15th March 1983 and confirmed by the Supreme Court of New South Wales on 16th May 1983, the nominal capital of the Company has been reduced from \$200 million divided into 200 million shares of \$1.00 each to \$20 million divided into 80 million shares of 25¢ each.

20

Each option holder is now entitled to take up 1 x 25¢ share at a cost of 20¢ for each 10 x \$1.00 shares which it was entitled to take up at a cost of 25¢ each, prior to the reduction in capital.

The Option Certificates will be forwarded to you in due course.

In view of the matters raised by you the Company intends to seek a declaration from the Supreme Court as to its obligations and you will be given an opportunity to be heard in these proceedings.

Yours faithfully
FORSAYTH OIL & GAS NL

MICHAEL J. EVANS
DIRECTOR

Exhibits.

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with Index

30

REGISTRAR
SUPREME COURT OF WESTERN AUSTRALIA

208

Livia Pty. Ltd.,
21 Howard Street,
PERTH WA 6000

30th May, 1984

The Board of Directors,
Forsayth Oil & Gas N.L.,
C/- Capital Share Registry,
111 St. George's Terrace,
PERTH WA 6000

Dear Sirs,

10

At 5 p.m. yesterday this Company received by delivery from your solicitors option certificate No. 8854 for 127,217 December '85 options.

We find this action on your part most confusing.

As you are well aware this Company has at all times sought registration of the 1,272,170 June '84 options transferred to it.

I repeat, yet again, that it has never accepted the offer of December '85 options made by your Company. Certificate No. 8854 is therefore returned herewith.

20

Livia today exercises its 1,272,170 June '84 options, each option entitling Livia to a \$1 share in the unissued capital of your Company.

Since you have failed to issue Livia with a certificate in respect of those options there is no certificate to be surrendered by Livia on the exercise of its 1,272,170 June '84 options. However enclosed herewith is a formal notice of exercise and application for shares together with bank cheques totalling \$318,042.50, being the application and allotment monies due on the exercise of those options.

30

Livia's entitlement to \$1,272,170 of the unissued share capital of your Company may be satisfied by the issue of 1,272,170 shares of \$1.00 each or by the issue of 5,088,680 fully paid ordinary shares of 25 cents each.

..2/-

Exhibits.

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I await receipt of Livia's share certificate in due course.

Yours faithfully,



JOHN COCHRANE
DIRECTOR

APPLICATION FOR SHARES

To: The Directors
Forsayth Oil & Gas N.L.

Livia Pty. Ltd. of 21 Howard Street, Perth, Western Australia hereby exercises each and every of its options for a total of ONE MILLION TWO HUNDRED AND SEVENTY TWO THOUSAND ONE HUNDRED AND SEVENTY (1,272,170) ordinary fully paid shares of \$1.00 each in Forsayth Oil & Gas N.L.

Enclosed herewith (being application and allotment monies) 10
is the sum of THREE HUNDRED AND EIGHTEEN THOUSAND AND FORTY TWO DOLLARS AND FIFTY CENTS (\$318,042.50) being payment at the rate of 25¢ per share.

Livia Pty. Ltd. requests that you allot such shares to it and it agrees to accept any shares allotted to it subject to the company's Memorandum and Articles of Association.

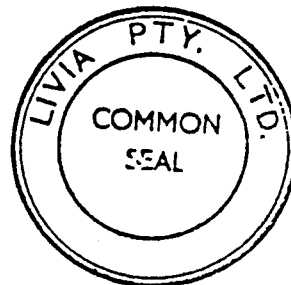
Dated the 30th day of MAY 1984.

THE COMMON SEAL of LIVIA PTY.)
LTD. was hereunto affixed by)
authority of the Board of)
Directors in the presence of:)

20

Director *[Signature]*

Director *[Signature]*



Exhibits.
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Received from LIVIA PTY LTD 30th May 1984.

- 1 Letter to Board of Directors Forsayth Oil & Gas NL
- 2 Application for shares
- 3 Bank Cheques for: 12,721.70
12,721.70
292,599.10
\$318,042.50
=====
- 4 Option certificate No 8854

L. Harbach.

For and on Behalf of Capital Share
Registry Pty Ltd

10

CAPITAL SHARE REGISTRY PTY LTD

MRS. L. HARBACH.

30/5/84.

-2-

The Company undertakes to issue to Livia 127,217 - .25¢ shares in the Company at an issue price of .20¢ per share, being a total issue price of \$25,443.40, upon proper exercise of the option. For this purpose we again enclose Option Certificate No. 8854.

Pending your reply, we hereby return the application for shares enclosed with your letter and bank cheques totalling \$318,042.50.

Yours faithfully,

Muir W. N. _____ .

F

FORSAYTH OIL & GAS N.L.

INCORPORATED IN NEW SOUTH WALES UNDER "THE COMPANIES ACT" 1961 AS AMENDED

REGISTERED OFFICE: 7TH FLOOR, PENFOLD HOUSE, 86-88 PITT STREET, SYDNEY, N.S.W. 2000
 HEAD OFFICE: 9TH FLOOR, ELDER HOUSE, 111 ST. GEORGE'S TERRACE, PERTH, W.A. 6000
 SHARE REGISTRY: CAPITAL SHARE REGISTRY PTY. LTD, 17TH FLOOR, 111 ST. GEORGE'S TERRACE, PERTH, W.A. 6000

OPTIONS

LIVIA PTY LTD 21 HOWARD STREET PERTH WA 6000	DATE 28.05.84
	REGISTER ..SYDNEY

THIS IS TO CERTIFY that the abovenamed is the registered holder, subject to the Memorandum and Articles of Association of the Company, of the undernoted options over fully paid shares of 25 cents each subject to the conditions overleaf.

REFERENCE BUY	2569	CERTIFICATE No. 8854	No. OF OPTIONS *****127217*
No. OF OPTIONS *EXACTLY ONE HUNDRED AND TWENTY SEVEN THOUSAND TWO HUNDRED AND* *SEVENTEEN*****			

GIVEN UNDER THE SHARE SEAL OF THE COMPANY



J. M. ... DIRECTOR
J. ... SECRETARY

THE OPTIONS SPECIFIED HEREUNDER EXPIRE ON THE 31ST DECEMBER 1985.
 THIS CERTIFICATE MUST BE SURRENDERED BEFORE THE WHOLE OR ANY PORTION OF THE SHARES CAN BE TRANSFERRED.

APPLICATION FOR SHARES

The Directors

I/We Mr _____
Mrs _____
Miss _____

Address _____

I/We hereby exercise my / our option for _____

_____ in words _____

_____ ordinary fully paid shares of 25c each in
FORSYTH OIL & GAS N.L.
I/We enclose (being application and allotment money)

_____ payment at the rate of 20 cents per share \$ _____

I/We request you allot such shares to me / us and I/We agree to accept
the same subject to the company's Memorandum and Articles of Association.
If this application is signed by an attorney, the attorney hereby declares
that he has no notice of revocation of the power under authority of which
this application is signed. Companies should sign under seal.

SIGNATURE(S): _____

Signed _____

CONDITIONS UPON WHICH THE OPTIONS MAY BE EXERCISED, AND THE EFFECT OF SUCH EXERCISE

Each option may be exercised by forwarding to Capital Share Registry Pty. Ltd. 17th Floor, 111 St. George's Terrace, Perth, W.A. 6000, the application for shares duly completed together with payment of 20 cents (being the application and allotment money for each new share taken up) and surrendering to the company of this certificate. The options may be exercised at any time prior to the 31st December 1985.

The options may be transferred by an instrument (duly stamped where necessary) in the form commonly used for transfer of shares at any time prior to the 31st December 1985.

Shares issued on the exercise of options will be allotted after receipt of all relevant documents and payments and will rank equally with the existing ordinary shares of the company.

Applications for listing on the Official Lists of the Stock Exchanges on which the Companies Securities are listed will then be made of the shares then in issue pursuant to this option.

NOTE: OPTIONS NOT EXERCISED BY 31ST DECEMBER 1985 WILL AUTOMATICALLY EXPIRE.

This application with the appropriate remittance should be lodged at the company's principal share registry.

CAPITAL SHARE REGISTRY PTY. LTD.
17TH FLOOR,
111 ST. GEORGE'S TERRACE,
PERTH, W.A. 6000

REGISTRAR:
SUPREME COURT OF WESTERN AUSTRALIA

Exhibit Marked 2 - Copy Option
Certificate by Forsyth Oil & Gas NL
to Livia Pty Ltd: 28.5.1984

IN THE PRIVY COUNCIL)
ON APPEAL FROM THE)
FULL COURT OF THE)
SUPREME COURT OF)
WESTERN AUSTRALIA)
APPEAL NO. 443 OF)
1984)

No. of 1985

APPEAL TO HER MAJESTY
IN COUNCIL

B E T W E E N :

FORSAYTH OIL & GAS N.L.
Appellant
(Plaintiff)

- and -

LIVIA PTY., LTD.
Respondent
(Defendant)

RECORD OF PROCEEDINGS

MUIR WILLIAM NICHOLSON
SOLICITORS
9TH FLOOR,
AUSTMARK CENTRE
15-17 WILLIAM STREET
PERTH WA 6000

TEL: 322.3355
REF: MES:SPW:28:6527