

16 January 2012

## **SA Court overturns Minister's heritage approval and exposes veto mechanism**

The board of Argonaut Resources NL (ASX:ARE) advises that the approval given by the South Australian Minister for Aboriginal Affairs and Reconciliation (the 'Minister') on 7 July 2010 pursuant to Section 23 of the Aboriginal Heritage Act 1988, (SA) ('AHA') in relation to EL 4296 ('Torrens') has been overturned following an appeal to the Full Court of the Supreme Court of South Australia.

Argonaut and its Joint Venture partner, Straits Resources Limited (ASX:SRQ), have been seeking access to the Torrens tenement for purpose of an exploratory drilling program. Straits is earning a 70% interest in Torrens under the terms of the Torrens Joint Venture.

The Torrens Joint Venture sought the Section 23 approval following the lodgement of an Aboriginal heritage site card over an unprecedented area of over 6,300 square kilometres.

The Section 23 approval by the Minister was one of three significant Ministerial approvals gained from the South Australian Government by the Torrens Joint Venture for the purpose of drilling.

In making the judgement to overturn the Minister's approval, the Supreme Court held that, under the AHA, the Minister must delegate his/her power if requested to do so by duly identified Traditional Owners, effectively providing a mechanism to veto exploration and mining activities. It would appear this power of veto can equally be applied to non-mining activities such as public infrastructure projects, including those in the metropolitan area. Significantly this delegation power rules out the Minister being able to assess applications in the broader interests of the State.

It should be noted that the full Supreme Court made no criticism of the Joint Venture partners nor of the initiating application for the Section 23 approval but found that the Minister, in considering the grant of the approval, had not acted strictly in accordance with the requirements of the AHA.

Argonaut's Chairman, Mr Patrick Elliott said:

"This is obviously a very disappointing outcome. South Australia is the only jurisdiction in Australia with legislation that provides for the mandatory delegation of ministerial powers to Traditional Owners, thus providing an effective right of veto over any activity.

"The interpretation of the AHA contained in this judgement has the potential to prevent any development in South Australia on land where Traditional Ownership can be asserted.

"Of particular concern to Argonaut is the current statutory mechanism under the AHA which may permit a delegation resulting in a veto preventing any development over land subject of an asserted site where the assertions are not the subject of any objective scrutiny, let alone any test requiring registration status.

“The blanket protection afforded to all and any site object or remains that fall within the broad definition of the AHA, combined with the unfettered power of Traditional Owners requesting a delegation, provides a strong power to quarantine land from any development.

“In our case, a site card was lodged and then amended following its initial submission to cover an increased area, including the proposed drill targets at Torrens.

“Regulatory and legislative oversights have eliminated intended Ministerial power and raise questions of appropriate procedure and governance. I strongly encourage the South Australian Government to act quickly and decisively to regain the power to determine the fate of development in the State and to introduce appropriate procedural rigor for the benefit of investors.

“In relation to the Torrens Joint Venture, I am particularly disappointed that our partners Straits (and previous partners) have been put in a position of having to spend several million dollars on access-related legal fees and associated costs and waste many years in an uncertain regulatory environment.

“Access litigation brought about by legislative uncertainty significantly erodes the exploration budgets of companies and the potential for further investment. These funds could otherwise be used to responsibly explore for, discover and develop economic mineral deposits, consequently bringing increased employment and royalty income to South Australia.”

“The Torrens Joint Venture is considering its next course of action in relation to approvals under the AHA. The State of South Australia, the Minister and Straits have until 19 January 2012 to apply for special leave to appeal to the High Court against the Supreme Court’s overturning of the Minister’s initial approval.”

### **Litigation under the Mining Act 1971 (SA)**

In addition to the recent heritage decision, there is a second stream of Torrens related litigation in progress. The primary litigation relates to native title authority under the Mining Act and centres around an appeal to the full bench of the Supreme Court of South Australia lodged by the Joint Venture partners with a view to overturning a decision of the Environment, Resources and Development Court of South Australia, made on 14 January 2011.

The native title related appeal by the Torrens Joint Venture was heard by the Full Court of the Supreme Court in October and December 2011. The outcome of this appeal is currently expected around March 2012. The Joint Venture partners stand well placed to receive a positive outcome from this Full Court appeal which positive result, if realised, may in turn help inform the outcome of future heritage considerations.

### **For further information:**

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