

**IN THE WARDEN'S COURT OF QUEENSLAND
HELD AT BRISBANE**

IN THE MATTER OF: **APPLICATION UNDER PART 7 OF THE MINERAL
RESOURCES ACT 1989 FOR A MINING LEASE
(NUMBER 70210) IN THE EMERALD DISTRICT**

BEFORE: **MR F W WINDRIDGE
MINING WARDEN**

APPLICANT: **PETER LINDSAY TULK**

OBJECTOR: **COL CARSON**

CATCHWORDS: **MINING – MINING LEASE – RECOMMENDATION
– FOSSICKING AREA – CARAVAN – BUS ON
LEASE – PERMANENT RESIDENCE –
BACKGROUND LAND OWNERS – TITLE TO LAND
– DAM – OLD WORKINGS – TEMPORARY ACCESS**

Mineral Resources Act 1989

REPORT:

The applicant (hereinafter referred to as the miner or applicant miner) seeks a mining lease under the provisions of section 234(1) of part 7 of the *Mineral Resources Act 1989* (hereinafter referred to as the *MRA* or the act) for the purpose of mining for SAPPHIRE, ZIRCON, and CORUNDUM. The application is for surface area of 4.29 hectares and is situated on Unallocated State Land in the Scrub Lead Designated Fossicking Land, County of PLANTAGENET, Parish of ANAKIE. Access is the Rubyvale Road. The lease, if granted, is to be known as “Future”.

Power to grant such a lease is vested in the Governor-in-Council pursuant to section 234 of the act after recommendation by the Minister. Except for the reservation in section 8(3), all minerals are the property of the Crown. The grant of a lease does not create any estate or interest in the land (s.10), although there is the power to determine title to land (s.363(5)). The landowner has no right of veto. The use of the land for the purposes nominated is a permitted use under s.319 of the *MRA*. Any mining tenure is not subject to the provisions of the *Integrated Planning Act*, being exempt from the provisions of the *Local Government Planning and Environment Act 1990* by virtue of s.319 (Part 8) of the *MRA*.

The application was lodged at the Mining Registrar's Office at EMERALD on 330 AUGUST 1999. A certificate of application was issued on 2 NOVEMBER 1999 (s.252 (1)) setting the last date for receipt of objections as 7 DECEMBER 1999 (s.252 (2)).

Col Carson lodged one objection pursuant to s.260 (1) of the Act. The matters raised in the objection will be dealt with at the appropriate point in the following recommendation.

The following matters have been taken into account and considered in making my recommendations (s.269 (4)). (*Sinclair v Maryborough Mining Warden* (1975) 132 CLR 473 p.481).

(a) Have the provisions of the Act been complied with?

The material indicates that the applicant is an eligible person as defined in s.5 of the act and is entitled to make the application under s.232 of the act.

The application area is not located on or forming part of any reserve as defined in the Act. The objector raises the validity of pegging ground that is in a Designated Fossicking area. Section 234(1) of the *MRA* does prohibit the grant of mining leases in fossicking areas. However, the Designated Fossicking area is available for leases, notwithstanding that there may be some restriction on areas taken up. That ground of objection is struck out. I find that the application is therefore not in respect of land over which, pursuant to s.238 (1) of the *MRA*, mining lease shall not be granted without the consent of another person or persons.

The objector raises the point that the lease boundary is within the prohibited distance in respect of Category A and Category B land. This assertion is based, from my understanding of her submission, on the location of her permanent residence on M L 1834. It appears that M L 1834 has been granted for some 20 years, and the holder M/s Carson has always resided on the lease. Notwithstanding that M/s Carson may consider she is in permanent residence on the lease, any living quarters are to be regarded as temporary. There is therefore no permanent residence constructed on the lease. I do not consider that the caravan and bus (as shown on the photographs tendered by the applicant) constitute a permanent residence. That ground of objection is struck out. In relation to the yards referred to by the objector as her "principal stockyard" and used for the purpose of restraining her milking goats and fowls, that provision of the Act is for the protection of the background landowner and M/s Carson is not a background landowner. M/s Carson merely holds a mining lease over the land for the purpose of mining. A mining lease is not a title to land. The facilities, as depicted in the photographs, do not constitute "principal stockyards". The photographs do indicate that the rubbish and litter that is on the lease environmentally downgrade M L 1834 held by M/sCarson.

Another matter referred to by the objector, namely the "dam", is not a dam constructed for that purpose or created by the diversion of a watercourse. The alleged "dams" are merely old workings that have filled with water from rain or run off from the surrounding land. Notwithstanding that this water may be used by stock or native fauna, the

watrerholes do not constitute a "dam". All objections in relation to category A and Category B land are struck out.

I am satisfied that there is no relevant permanent building or relevant feature on the land as defined in s.5 requiring the consent of any person (s.238 (2)).

At the time of marking out and lodging the application, the applicant was the holder of PROSPECTING PERMITS 71043 (s.232 (1)).

A declaration of posting was lodged on 9 DECEMBER 1999 (s.252 (9)), and service of documents was in accordance with s.399.

I am satisfied, on the material, including the uncontested information in the application form and the declaration of posting and advertising that all the provisions of the act (other than the provisions requiring the hearing) have been complied with or substantially complied with. (s.392).

I find that I am satisfied that, (a) the provisions of the act have been complied with and (b) the consent of any trustee or other person is not required.

The hearing was held at Emerald Warden's Court on 8 March 2000 and 9th March 2000. A perusal of the transcript will indicate the reason for the split hearing. The applicant has been given the chance to respond to any comments made.

(b) Is the land mineralised or is the other purpose for which the lease is sought appropriate?

I am satisfied that the resources sought are minerals (s.5). The applicant does not propose to construct any infrastructure to assist in the winning of those minerals. However, he is entitled to do so under section 234(1)).

I accept the applicant's advice and I am satisfied on the information given that the purpose for which the lease is sought is appropriate. The application area is within an area generally recognised as gem bearing. The applicant is required to satisfy the Court that mineralisation exists. The applicant is confident that he can recover material that was left behind by previous miners as a lot of the earlier mining conducted in this area was inefficient. The re-working of old ground is very common in this area. The economic viability of the project is a matter for the applicant's commercial assessment, but I am satisfied that there is sufficient evidence of mineralisation to warrant the grant of a lease.

(c) Will there be an acceptable level of development and utilisation of the resources within the area applied for?

From documentation lodged with the application, I am satisfied the applicant has sufficient resources to progress development to an acceptable level. The applicant has

mined sapphires in this area for a number of years, and has for periods of time been employed by other machinery miners.

(d) Is the area sought an appropriate size and shape?

There is nothing in the information supplied by the applicant to suggest that the surface area of the land in respect of which the mining lease is sought is not an appropriate size and shape. The area sought follows the mineralisation of the ground that is available.

There is no evidence of any conflict with the boundary of any other tenement and therefore the cost and delay of a survey would appear to be not warranted.

(e) Is the term sought appropriate?

The term of lease applied for is 10 years. I am satisfied that the term sought is appropriate and will allow for mining and rehabilitation to be completed. The applicant has the option of renewal under s.286 of the Act, or surrender at an earlier date under section 309.

(f) Has the applicant the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease?

From the information supplied, I am satisfied the applicant has the necessary financial and technical capabilities or access to those resources to carry out the mining operation. Mining for sapphire is basically an extractive industry utilising shallow open cuts and does not require extensive plant, processing equipment, or large injections of capital. The applicant has mined sapphires for a number of years and in my opinion has the experience necessary to complete the mining operation. [*Carr -v- Simnovec* (1980) 26 SASR 263 at 268, and *Pacminex -v- Aust. Nephrite Jade Mines* (1974) 7 SASR 401 at 415].

(g) Has the past performance of the applicant been satisfactory?

There is no material before me to suggest that the past performance of the applicant has been unsatisfactory. The local Field Officer and Environmental Officer will be available to monitor performance and rehabilitation and report any breach of conditions. The Inspectorate should monitor the methods adopted for mining, ensuring that industry standards are maintained and that licensed persons operate all machinery in a safe and competent manner.

(h) Is there any disadvantage to the holder of or applicant for exploration permits or mineral development licences?

The applicant was the holder of the relevant pre-requisite title under s.232 of the *MRA* at the time of marking out. It does not appear that the holder of or applicant for any other exploration permit or mineral development licence has been affected.

(i) Will the operations to be carried on under the proposed lease conform with sound land use management?

The land appears to be capable of low intensity grazing under favourable conditions, but is currently unallocated state land. It seems the proposed mining operation will cause no significant disturbance to stock or stock watering or management facilities. The general nature of the land is described as “gently sloping to flat” with native grasses, parthenium, galvanised burr and bindi”. There is no arable top soil. Rainfall is low. Stock fodder is generally of poor quality on the application area with little or no fodder in deficit rainfall years.

Information has been supplied as to the applicant's site management proposals. The evidence leaves me with no reason to believe that the proposed mining operations do not conform with sound land use management.

(j) Will there be adverse environmental effects caused by the proposed operation, and if so, the extent thereof?

An Environmental Management Overview Strategy (EMOS) has been lodged with the Registrar and accepted under delegation, subject to any recommendation of this Court and any further requirement of the Minister.

The proposed mining activity is in an isolated area away from human habitation, with the exception of Col Carson who lives on Mining Lease 1834. The mining will not have any deleterious effect on any river or creek system. Chemicals will not be used in the mining process. Due to low rainfall and the method of mining, erosion will not be a problem provided the usual control measures are put in place. There are no other environmental factors of significance which may be adversely effected by the operation. It is observable from other operations that the disturbed crust retains more of the natural rainfall, thereby encouraging the regeneration of native flora. The applicant will be required to backfill where possible as mining progresses, keeping out-standing rehabilitation to a bare minimum where possible. The whole area has been left in an untidy state and the rehabilitation to be conducted by this miner will restore some visual amenity to the area.

By section 35 of the *Mineral Resources Regulations 1990*, the applicant is required to maintain the lease and access free of *parthenium* weed and any other weed declared under the *Rural Lands Protection Act 1985*.

(k) Will the public right and interest be prejudiced?

No factors prejudicial to the public right and interest have been identified. There appears to be no endangered flora or fauna within the application area. There are no public utilities on or across the application area. There are no sites of historical interest or aboriginal significance within the area. If any such sites are identified, the EMOS can be amended to put forward specific site protection or site avoidance strategies.

(l) Has any good reason been shown for a refusal to grant the mining lease?

The economic viability of this project is a commercial decision of the applicant. When all other aspects of the application and the matters referred to in section 269 are taken into account, I am satisfied that the objects of section 2(a), (b), (c), (d), (e) and (g) will be attained if a mining lease is granted for the term recommended for the following reasons:

- ◆ A small scale/low impact operation is planned.
- ◆ It is unlikely that the land applied for is of any interest to a large scale miner.
- ◆ The location of the proposed mining operation and the proposed method of mining is unlikely to cause environmental or public interest concerns about safety.
- ◆ A realistic security deposit will be imposed to guard against financial failure of the miner to ensure rehabilitation is completed.
- ◆ The applicant appears to have sufficient experience in the industry to accurately assess the potential of the project.
- ◆ There is a market for the product and the project will provide employment.

In my view, no good reason has been shown for a refusal to grant the lease application (*Carr –v- Simnovec, Pacminex –v- Aust Nephrite Jade Mines supra*).

(m) Is the proposed mining lease operation an appropriate land use, taking into consideration the current and prospective uses of the land?

The material indicates that the land is currently used for grazing purposes and appears, on the evidence, to be suitable for no other use. In my view, there appears to be no risk of significant conflict between the current land use, or any prospective land use and the proposed mining operation. The land appears to be Class VII, and post mining will return to Class VII. The proposed mining operation appears, on the evidence, an appropriate land use, taking into account the current and prospective uses of the land.

A compensation agreement is not required.

GENERAL COMMENTS

This recommendation is based on an assessment of the information supplied. The applicant does not propose to construct any infrastructure on the lease, although he has the right to do so. To minimise disturbance to M/s Carson, who lives on the adjoining lease, the applicant has indicated he will construct an earthen wall where his lease boundary is closest to the residence to minimise noise and visual disturbance.

The objector has raised the issue of access to her lease. While it appears M/s Carson has the option of a different access for her motor vehicle, there is concern that her nominated access may be interfered with even though she uses this access for non-vehicle access. If the mining program interferes with the nominated access to M L 1834, the miner is to provide a temporary access for M/s Carson.

RECOMMENDATION:

Upon consideration of all the matters set forth in s.269 (4) of the *Mineral Resources Act 1989*, I recommend that the mining lease be granted over the whole of the application area for the purpose of mining for SAPPHIRE, ZIRCON and CORUNDUM for a term of 10 YEARS (s.270 (2)).

Dated at BRISBANE this 10th day of April 2000.

F.W. WINDRIDGE
MINING WARDEN

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