

**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 10241) IN THE CHARTERS TOWERS
DISTRICT**

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

APPLICANT: **TOWNSVILLE GRADED SANDS PTY LTD**

CATCHWORDS: **MINING LEASE – SILICA SAND – DEFINITION
'MINERAL' 'MINE' – USE FOR ITS CHEMICAL
PROPERTIES**

Mineral Resources Act 1989 s. 269

REPORT:

The applicant (hereinafter referred to as the miner or applicant miner) seeks a mining lease under the provisions of part 7 of the *Mineral Resources Act 1989* (hereinafter referred to as the *MRA* or the Act) for the purpose of mining for SILICA SAND. The application is for a surface area of about 25.41 hectares and is situated on LOT 1 on CP 895560, County of WILKIE GRAY, Parish of ST JAMES, being part of a grazing homestead perpetual lease located approximately 56 kilometres west of Townsville. Access is off a gazetted road which passes through defence force land, across the old Townsville – Greenvale Railway line, and thence through the property wherein the lease is located. The lease, if granted is to be known as "Fairgo".

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 CHARTERS TOWERS on 4 DECEMBER 1997. A certificate of application was issued on the same date (s.252 (1)) setting the last date for receipt of objections as 8 JANUARY 1998 (s.252(2)).

A number of objections were lodged pursuant to section 260(1) of the Act, but have been withdrawn after conferences arranged by the Registrar. 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 section 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 s.5. I find that the application is therefore not in respect of land over which, pursuant to s.238(1) of the *MRA*, a mining lease shall not be granted without the consent of another person or persons. 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(1)). The applicant's agent states he has lodged consent forms in relation to the crossing of railway land.

At the time of marking out and lodging the application, the applicant was the holder of prospecting permits 10559, 10566 AND 10569 (s.232(1)).

A declaration of posting was lodged on 20 January 1998 (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, (b) there is no valid objection remaining, and (c) the consent of any trustee or other person is not required. The matter was listed for hearing at Charters Towers on 31st May 1999 and 6th July 1999 to allow the applicant the opportunity to produce evidence of the chemical properties and use of the product.

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

I am satisfied that the resource sought is a mineral (s.5), and that the applicant does not propose to establish any infrastructure to assist in the winning of those minerals. (s.234(1)). It is apparent from the detail contained in the application that the applicant intends to use a mobile screening plant as part of his operation, and will then haul out back to Townsville.

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 generally recognised as containing a winnable quantity of silica sands. The applicant estimates there is a deposit of 150,000 tonnes. It is proposed to extract the silica sand at the rate of about 15,000 tonnes per annum. The applicant is required to satisfy the Court that mineralisation exists. From my familiarity with the area and a past inspection, I am

satisfied a substantial deposit exists over a considerable 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 silica sand is to be extracted, screened on site and loaded out.

(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 over which the mining lease is sought is not an appropriate size and shape. The lease area has been surveyed to confirm that the lease is located outside the land acquired by the Commonwealth for army training purposes.

(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 or surrender at an earlier date under s.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. Removal and screening of the silica sand 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 silica sand 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 all machinery is operated in a safe and competent manner by licensed persons. Periodic inspections should be conducted to ensure that mining and rehabilitation is being conducted according to the submitted and approved plan of operations.

(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 authority 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 used for low intensity grazing under favourable conditions, and 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 'gentle sloping ridges with natural pasture'. From previous inspections, vegetation appears very sparse. There is no arable top soil. 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. This lease, if granted, will form part of Project PJ 10118.

The proposed mining activity is in an isolated area away from human habitation. 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. There are no other environmental factors of significance which may be adversely affected by the operation that have not been addressed in the EMOS.

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

No factors prejudicial to the public right and interest have been identified. It appears there are 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 s.269 are taken into account,

I am satisfied that the objects of s.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 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.

No person claiming any right or interest under native title has lodged an objection.

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, being suitable for careful pastoral use, and post mining will return to Class VII for similar use. The proposed mining operation appears, on the evidence, an appropriate land use, taking into account the current and prospective uses of the land.

GENERAL COMMENTS

This recommendation is based on an assessment of the information supplied. Should there be any dispute over damage or loss, or should the miner depart from his plan of operations or EMOS and cause loss or damage or interruption to the management of the property not envisaged or not foreseen in the terms of any compensation agreement, the parties are at liberty to apply to the Court for a determination or award of damages, and if necessary, injunctive relief under the powers contained in s.363(6).

The definition of mineral (s.5 *MRA*) includes “(j) silica, including silica sand, if mined for use for its chemical properties”. The definition of “mine” (s.5 *MRA*) means to carry on any operation with a view to or for the purpose of –

- (a) winning mineral from a place where it occurs;
- (b) extracting mineral from its natural state;
- (c) disposing of any mineral in connection with or waste substances resulting from such winning or extraction.”

I am satisfied that the operation described in the documentation presented to the Court meets the definition of "mine".

In respect of "use for its chemical properties", the applicant relies on a report compiled by Dr C Cuff. In that report, Dr Cuff refers to comparison testing using a Bundaberg sample as the control and the High Range sample as the test subject. The test sample produced a silica SiO_2 component of 95.1 per cent silica. It appears that the product will be delivered to Scotts Brickworks for the manufacture of silicate bricks.

Silica sand from the Harvey's range area was the subject of some interest in the Report on MLA 10220 (unreported Warden's Court Charters Towers 15 July 1996). That recommendation found that the use of this silica sand, when used in brick making and heated in the process, is used for its chemical properties, and therefore needs to be extracted under the authority of a lease granted under the *Mineral Resources Act 1989*.

The material submitted to the Court indicates that no structures will be erected on site and it is usual that plant and equipment is removed after sufficient material has been extracted, screened by the mobile power screen, and hauled off site. Mining will be intermittent ie. not full time and only as required to meet orders.

RECOMMENDATION:

Upon consideration of all the matters set forth in s.269(4) of the Act, I recommend that the mining lease be granted over the whole of the application area for the purpose of mining for SILICA SAND, and for the establishment of infrastructure operations namely SCREENING and HAULOUT for a term of TEN YEARS (s.270(2)).

Dated at BRISBANE this 12th day of July 1999.

F.W. WINDRIDGE
MINING WARDEN

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