

IN THE WARDENS COURT OR QUEENSLAND
HELD AT BRISBANE

IN THE MATTER OF: **APPLICATION UNDER PART 7 OF THE
MINERAL RESOURCES ACT 1989 FOR MINING
LEASE 10226 IN THE CHARTERS TOWERS
DISTRICT**

BEFORE: **F W WINDRIDGE
MINING WARDEN**

APPLICANT: **CIRCLE RESOURCES PTY LTD**

OBJECTOR: **THE COMMONWEALTH OF AUSTRALIA**

CATCHWORDS: **MINING – MINING LEASE – OBJECTION –
JURISDICTION – FREEHOLD LAND –
RESERVATION OF MINERALS –
COMMONWEALTH LAND**

Mineral Resources Act 1989 ss 3.2, 8.3, 234(1), 269(4)

RECOMMENDATION:

The applicant (hereinafter referred to as the miner or applicant miner) seeks a mining lease under the provisions of Section 234(1)(a) of Part 7 of the *Mineral Resources Act 1989* (hereinafter referred to as the Act or the *MRA*) for the purpose of mining GRANITE as building stone in block or slab form. The application is for surface of 5.994 hectares and is situated in the Parish of Argentine, County of Burdekin on Dotswood Pastoral Holding about 66 kilometres west of Townsville. The lease, if granted, is to be known as “Dotswood Rose”.

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) of the Act, 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 use of the land for the purpose 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 Registrar’s office at Charters Towers on 20 SEPTEMBER 1996. A Certificate of Application was issued on 23 SEPTEMBER 1996, setting 21 OCTOBER 1996 as the last date for the receipt of objections. (s.252(2).)

One objection was lodged by the Commonwealth of Australia, C/- Domestic Property Group. That objection related to the Commonwealth’s proposed use of the land and its environmental responsibilities.

This application was before the Court a number of times and no parties appeared. This was by arrangement to avoid unnecessary costs. All documents were lodged through the Registrar. A number of adjournments were granted as all parties were waiting for the result of a Western Australian case before the High Court which was in relation to the issue of jurisdiction. Currently before the Court are documents that relate to the application as filed by the applicants, further submissions by the applicants, the notice of objection and supporting grounds, various copies of notices of adjournments or advices in relation to same sent to the parties and the Court. On behalf of the objector, there is a submission from the Australian Government solicitor in relation to jurisdiction issues.

In view of the submission put forward by the Australian Government Solicitor (the AGS), it is necessary to determine the issue of jurisdiction, and therefore the matters to be considered under Section 269(4) of the *MRA* can be set aside and dealt with at a later stage.

As I understand the submission, the land within the application area is totally within "Dotswood" Station which has been acquired by the Army for training purposes. The AGS cites the recent decision of the High Court of Australia in *Commonwealth of Australia v State of Western Australia* (1999) HCA5 11 February 1999 where the Court considered the application of the Western Australian Mining Act to freehold land held by the Commonwealth subject to reservations to Western Australia of the minerals in the land. The Court held that the Western Australian Mining Act does not apply to freehold land vested in the Commonwealth and that this conclusion was not affected by the reservations of minerals to the State.

The decision of the High Court (*supra*) means that Section 3(2) of the *MRA* does not apply for a number of reasons. Further submissions in relation to jurisdiction are set out in correspondence dated 11 April 1997 by the AGS.

In view of the ruling by the High Court, the applicant has withdrawn the application.

However, it is noted that:

- a) the application otherwise appears to be in order.
- b) the initial grounds of objection were not insurmountable.
- c) the detailed submission from the applicant fully described the extractive operation and the minimal impact of that operation.
- d) a small area is involved
- e) operations would be intermittent
- f) other mining operations on Dotswood, granted before acquisition, will continue.

While every department, entity, landowner or lobby group may claim special rights to prevent entry on to land for mining purposes, the cumulative effect is that access to resources is denied, and this brings a number of detrimental effects on industry and business into play.

However, as the point of jurisdiction is accepted, and the application has been withdrawn, the application is terminated. It is therefore not necessary to consider the balance of s.269 of the *Mineral Resources Act*.

Dated at Brisbane this 14th day of February 2000.

F W WINDRIDGE
MINING WARDEN