

**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 80083) IN THE ROCKHAMPTON  
DISTRICT**

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

**APPLICANT:**                      **BRENDAN JOHN FITZGERALD                      50%  
DOUGLAS PETER BEATH                      50%**

**CATCHWORDS:**                      **MINING LEASE – GOLD – FAXED LETTER OUT  
OF TIME IS INVALID OBJECTION**

*Mineral Resources Act 1989 s. 269, s. 260*

**REPORT:**

The applicants (hereinafter referred to as the miners or applicant miners) seek 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 GOLD, and for the establishment of TOP SOIL STOCKPILES. The application is for surface area of 8.4376 hectares and is situated on LOT 112, SC35/50058, County of RAGLAN, Parish of CALLIUNGAL, being about 7 kilometres north east of Mount Morgan. Access is off a public road. The lease, if granted, is to be known as “Dee River Mangoes”.

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 ROCKHAMPTON on 22 SEPTEMBER 1999. A certificate of application was issued on 24 SEPTEMBER 1999 (s.252 (1)) setting the last date for receipt of objections as 5 NOVEMBER 1999(s.252(2)).

Two objections were lodged, one only of which appears to be lodged pursuant to section 260(1) of the Act. That objection ( Herbert) has been withdrawn. The other objection lodged in the form of a faxed letter by the Executive Officer of the Shire of Mt Morgan

was lodged on 9 November 1999 at the Registrars office. Such objection is out of time and there is no discretion to extend the time for lodgment. The applicant miner states he did not received his copy until after the time has closed, but he was aware the Council had knowledge of the application as he had discussed the matter with council and his application was considered by the Council at their October meeting. The objection of the Shire of Mount Morgan is struck out on the grounds that such objection was not lodged within time, and the objector, having been given notice by the Registrar, failed to appear on 14 December 1999.

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 Applicants are an eligible persons 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)).

At the time of marking out and lodging the application, the applicant was the holder of PROSPECTING PERMIT 80207 (s.232(1)).

A declaration of posting was lodged on 12 NOVEMBER 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).

Mr Beath appeared on 14 December 1999 for the applicants at the Wardens Court at Rockhampton. . No objector appeared. I find that I am satisfied that, (a) the provisions of the Act have been complied with, (b) there is no valid objection, and (c) the consent of any trustee or other person is not required. I therefore dispense with the hearing, and proceed under the provisions of s.270(1) of the Act.

**(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 proposed infrastructure namely top soil stockpiles is necessary to assist in the winning of those minerals. (s.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 known for the production of gold. The applicant is required to satisfy the Court that mineralisation exists. 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. The applicants intend to mine the area in a low impact operation which includes removal of topsoil, detection of gold by electronic means, and replacing the top soil. Such a method of mining is used extensively in Western Australia.

**(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.

**(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 application area covers that part of Lot 112 east of the road reserve up to the banks of the Dee River, and excluding any part of the road reserve.

**(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. The applicants intend to strip the top soil, store the top soil, detect the exposed ground, and replaced the topsoil, planting vegetation as they proceed. Such an operation does not require extensive plant, processing equipment, or large injections of capital. The applicant has prospected for gold for 10 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 Applicants 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.

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

At least one of the applicants 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 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 undulating, sandy and loamy. Photographs supplied by the field Officer indicate the area is generally overgrown and of little grazing value. 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. 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.

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. 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.

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 VIII, and post mining will improve to Class VI. 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 or determination of the Court will compensate the landowner for any conflict or loss over land use (s.281). I note that a compensation agreement has not been filed with the Registrar in accordance with s.279 of the Act.

**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 the 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).

**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 GOLD, and for the establishment of infrastructure namely TOP SOIL STOCK PILES for a term of TEN YEARS (s.270(2)), subject to compensation being settled between the parties or determined by this Court.

Dated at BRISBANE this 16<sup>th</sup> day of December 1999.

**F.W. WINDRIDGE**  
**MINING WARDEN**

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