

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

IN THE MATTER OF: **APPLICATION UNDER PART 7 OF THE MINERAL
RESOURCES ACT 1989 FOR A MINING LEASE
(NUMBER 30200) IN THE GEORGETOWN
DISTRICT**

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

APPLICANT: **BERNADETTE PHILOMENA O'ROURKE**

OBJECTOR: **ETHERIDGE SHIRE COUNCIL**

CATCHWORDS: **MINING LEASE – GOLD – GEORGETOWN AREA –
OBJECTION – ROAD MAINTENANCE –
JURISDICTION OF COURT – OUTSIDE
BOUNDARIES OF LEASE – AS OF RIGHT USAGE
OF PUBLIC ROADS**

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 GOLD, SILVER ORE and LEAD, and for the establishment of infrastructure associated with that mining namely ACCESS and STOCKPILE AREAS. The application is for surface area of 69.21 hectares and is situated on Lot 4533 on PH 1199, County of EINASLEIGH, Parish of HUONFELS, being part of Ironhurst Holding about 36 Kilometres north of Georgetown. Access is through the same property. The lease, if granted, is to be known as 'ZECH'S'.

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. Save 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 GEORGETOWN on 12 MAY 1997. A certificate of application was issued on 6 May 1999 (s.252 (1)) setting the last date for receipt of objections as 30 June 1999 (s.252(2)).

One objection was lodged pursuant to section 260(1) of the Act by the chief Executive Office of the Etheridge Shire Council. The matter was listed for mention at Mareeba on 19th August 1999. The objector failed to appear and failed to further support the objection. The application was further adjourned to 10.00 am on Monday 23 August 1999 to allow the objector the opportunity to file any additional material in relation to the objection. No person appeared on that date, and no additional material was received. However, the objection will be dealt with at the appropriate stage of this 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 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 EPM 8452 and 10400 (s.232(1)).

A declaration of posting was lodged on 5 July 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 have been complied with or substantially complied with. (s.392).

(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), and that the proposed infrastructure 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 generally recognised as gold bearing, and this area has supported gold mining operations for a number of years. The applicant is required to satisfy the Court that mineralisation exists. There is evidence of previous mining activity. 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 resource 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 is mining on nearby leases and has the equipment necessary to conduct the operation. It is anticipated that some work will be completed by contractors.

(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. There are a number of applications associated with this application because the ore is in small scattered areas of mineralisation. There appears to be no conflict with the boundary of any other tenement and therefore the cost and delay of a survey would not appear to be justified.

(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 removal of the gold bearing ore is basically an extractive industry utilising shallow open cuts and does not require extensive plant, processing equipment, or large injections of capital. Treatment is to be conducted at a plant that is already operating on a lease nearby. The applicant has mined gold for a number of years and in my opinion has the experience necessary to complete the mining operation. [*Carr -v- Simnovac* (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.

(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 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 of low intensity grazing land with spear grass the main pasture. 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) is currently lodged with the Registrar in respect of other operations, and accepted under delegation, subject to any recommendation of this Court and any further requirement of the Minister in respect of this application. The EMOS for PJM 30070 has been amended to include this project.

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 on this lease. Due to low rainfall and the method of mining, erosion will not be a problem. There are no other environmental factors of significance that may be adversely affected by the operation that have not been addressed in the EMOS.

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 by the provisions in section 35 of the Mineral resources Regulations 1990.

(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.

The local authority has raised the issue of road maintenance as an objection. Road haulage is a public right associated with the use of public roads. Any road that is outside the boundaries of the lease is outside the boundaries of the jurisdiction of the Wardens Court and outside the authority of the Department of Mines and Energy to impose conditions. As long as the trucks, load and drivers comply with the road transport rules and regulations, the miner has an "as of right" usage of public roads. The objection is struck out for those grounds.

(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 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 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 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 to the Honourable the Minister that the mining lease be granted over the whole of the application area for the purpose of mining for GOLD, SILVER ORE, LEAD ORE, and for infrastructure purposes namely ACCESS and STOCKPILE AREAS. for a term of TEN YEARS (s.270(2)).

Dated at GEORGETOWN this 23rd day of August 1999.

F.W. WINDRIDGE
MINING WARDEN

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