

**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 70192) IN THE EMERALD DISTRICT**

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

**APPLICANT:**                **ARMFEST PTY LTD**

**CATCHWORDS:**              **MINING - MINING LEASE – RECOMMENDATION –  
AGREED CONDITIONS – LIMITED RENEWAL**

*Sinclair v Maryborough Mining Warden (1975) 132 CLR  
473, 481*

**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 SAPPHIRE, ZIRCON, DIAMOND and GOLD. The application is for surface area of 43.62 hectares and is situated on Lot 19 on PLAN clm694, County of CLERMONT, Parish of KEILAMBETE. Access is through the same property. The lease, if granted, is to be known as 'BILLY JOE'.

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 7 JULY 1999. A certificate of application was issued on 9 JULY 1999 (s.252 (1)) setting the last date for receipt of objections as 13 AUGUST 1999 (s.252(2)).

One objection was lodged pursuant to s.260(1) of the Act. However, after negotiations between the parties and a joint inspection with the Wardens Court, that objection has been withdrawn. 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 (ie a registered company ACN 051650616) 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. 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. 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 PERMIT 70155(s.232(1)). A declaration of posting was lodged on 16 AUGUST 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, (b) there is no valid objection remaining, 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 resources sought are minerals (s.5), and that the proposed infrastructure is necessary to assist in the winning of those minerals. (s.234(1)).The infrastructure proposed at this stage is a haul road/access road, soil stockpile areas for rehabilitation work, and the construction of a water catchment dam. The dam is to be fenced off with a fence of a satisfactory standard but no less than a three barb wire fence.

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. Sapphire and zircons have been recovered from the area in the past. One small section of Zircon gully was hand mined by an

individual many years ago. 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.

**(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 for a number of years and has the equipment and plant available for this operation.

**(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, but takes in other land that the applicant says will not be disturbed by actual mining. This land is generally to the east of an unnamed gully and to the west of a gully known locally as "Zircon Gully". Both areas are coloured yellow on the attached lease diagram marked appendix "A". The applicant states that part of this area to the east of the lease will be utilised for a catchment dam. The area is not to be strip mined as the applicant indicates he expects the sapphire deposits to occur in little gutters and only these gutters will be mined to recover the sapphire bearing wash.

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 2 years. The term of the lease has been reduced from that originally sought after negotiation between the landowner and the miner. The applicant indicates he can possibly have the mining and rehabilitation completed within 18 months subject to the availability of water. At the present time there is no water available on the proposed lease. Lack of water may prolong the operation for a short time. The alternative is to haul out the material for treatment at a plant some 7 kilometres away. This will add to the cost of the operation and be a further disturbance to the landowner. 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 if mining and rehabilitation is completed. The applicant states it is his intention to complete the mining and rehabilitation program within the two year term, but may have to extend the term if there is no water available, or other unavoidable or unexpected circumstances arise. The landowner consents to the term with a limit of one twelve month extension only. I consider it would be appropriate for the lease to be conditioned accordingly.

**(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 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 flats interspersed with granite ridges. There is top soil which could be considered arable to the east of the unnamed gully. However, this will not be disturbed by mining. Rainfall is generally low although recent rains have ensured there is currently a good cover of native pasture. Stock fodder is generally of poor quality on the application area, this area being partly covered with a type of blackberry/blueberry bush of little use.

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 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 re-seeding operations conducted as part of the rehabilitation process shall be with seed specie nominated by the landowner Mr Hicks. The applicant will be required to backfill where possible as mining progresses, keeping out-standing rehabilitation to a bare minimum where possible.

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*. There is some evidence of the existence of *parthenium* in the general area although there appears to be none on the actual lease area. The miner has indicated his willingness to assist the landowner with the control or *parthenium* along the access route. The type of control and chemical spray to be used shall be that nominated by the landowner.

**(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 VI and VII, and post mining will return to Class VI and 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 not been filed with the Registrar in accordance with s.279 of the Act. However, I am informed that the parties have discussed this issue and the matter may be resolved in the near future.

**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).

No structures are to be erected on the lease area except those directly connected with the mining operation. No person is to reside on the lease. The miner has indicated that he is prepared to give the following undertakings:

- a) To construct the access route along a route nominated by the landowner.
- b) To construct such route to a standard suitable to act as a firebreak where nominated by the landowner, and such firebreak to be left at the nomination of the landowner.
- c) To construct such access route/haul road along elevated ridges in order to minimise disturbance and at the direction of the landowner, such route/road to be at least 20 meters from any fence line, or as marked by the landowner.
- d) To install grids and lockable gates at sites nominated by the landowner.
- e) At the completion of mining, to rip and seed any track or access route as nominated by the landowner, or to leave such track or access route in a trafficable condition if required by the landowner.

- f) Where possible, during construction of the access track and mining on the lease, to leave major trees but to stack with as little soil as possible in an approved manner all timber necessarily cleared as part of the operation. The miner shall not burn or otherwise destroy any other timber or vegetation except that directly involved in the mining operation.
- g) If the access as determined by the landowner is different from the access as nominated by the miner in his application, the changes to the access are to be recorded by the Registrar.
- h) Any catchment dam constructed on the lease area is to be fenced with a three barb wire and at the completion of mining is to be removed or left at the discretion of the landowner. If removed, the dam is to be de-commissioned in the approved manner at the completion of mining.
- i) A sign of suitable dimensions to be erected in an appropriate position, such sign to contain the words "REGISTERED MINING LEASE – KEEP OUT".
- j) The miner assist the landowner to prevent trespass on the property or lease area and report to the landowner the presence of any unauthorised persons in the area.
- k) If earth works are not to be constructed by Mr Graham, any other contractor engaged shall be one approved by Mr Hicks, and any contractor working on site shall be escorted on to and off the lease by Mr Graham and shall remain under the direction of Mr Graham at all times. Access to the lease is to be restricted to the applicants, their immediate employees and such contractors as are engaged for any specific task.
- l) The miner shall commence bona fide operations within 30 days of notification of grant, and agrees to limit any renewal or extension of the lease to 12 months only.

**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, DIAMOND and GOLD for a term of TWO YEARS, subject to compensation being settled between the parties or determined by this Court (s.270(2)). Further recommended that the applicant miner be granted one renewal only of twelve months if any renewal is sought.**

**Dated at BRISBANE this 24<sup>th</sup> day of March 2000.**

**F.W. WINDRIDGE  
MINING WARDEN**

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