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 80037 IN THE ROCKHAMPTON DISTRICT**
BEFORE:	**MR A J CHILCOTT, ACTING WARDEN**
APPLICANTS:	**John Francis Edwin KINGSLEY (10%)** **Evan Frank RYAN (90%)**
CATCHWORDS:	**MINING - MINING LEASE – NOTICE OF ENTRY – MINERALISATION – PAST PERFORMANCE – REHABILITATION – DISTURBANCE – BLASTING – DRILL HOLES – CAPPING - EROSION** ***Mineral Resources Act 1989* s. 165(3)**

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 SILVER ORE, GOLD, COPPER ORE, LEAD ORE AND ASSOCIATED INFRASTRUCTURE. The original applicants were John Francis Edwin KINGSLEY and John Egan KENNY. Both applicants had a 50% interest in the mining lease application. Due to the unfortunate passing of John Egan KENNY, an assignment of KENNY'S interest was made to Evan Francis RYAN. Evan Francis RYAN has subsequently obtained a 90% interest in the application leaving John Francis Edwin KINGSLEY with a 10% interest in the application.

The application is for a surface area of 42.60 hectares and is situated on Lot 1 on Registered Plan 614858 County of Deas Thompson, Parish of San Jose. Access to the lease area is proposed to be by way of Lot 148 on DS 208 County of Deas Thompson, Parish of San Jose.

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. All minerals are the property of the Crown, save for the provisions of s.8 (3). 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 1 November 1995. A certificate of application was issued on 7 November 1995 (s.252 (1)) setting the last date for receipt of objections as 5 December 1995 (s.252 (2)).

Objections were lodged by Malcolm T. Wardle, Jacklin M. Wardle, David J. Parsons and Roslyn Paulette Murray pursuant to section 260(1) of the Act. The objections by Parsons and Murray have subsequently been withdrawn. The hearing took place at Yeppoon Magistrates Court on 16 & 17 February 1999. Both the Applicants and the objector Malcolm Wardle appeared with legal representation and gave evidence. Evidence was also called from other witnesses. An on site inspection was conducted on 16 March 1999 which was of considerable assistance to me.

There were originally nine (9) grounds contained in the Form of Objection by Malcolm and Jacklin Wardle, however ground one (1) being – INSUFFICIENT INFORMATION was struck out some time ago by the Court and ground seven (7) – being RESTRICTED LAND has subsequently been withdrawn by the M.& J. Wardle.

The following matters have been taken into account and considered in making my recommendations. (s.269(4)).

(a) Have the provisions of the Act been complied with?

The material indicates that the Applicants are eligible persons as defined in section 5 of the Act and are 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 applicants were the holders of Exploration Permit 9564 (s.232(1)).

A declaration of posting was lodged on 11 December 1995 (s.252 (9)), and service of documents was in accordance with s.399.

Although there was no objection lodged, it has been submitted on behalf of the objectors that the Applicants have failed to comply with the provisions of the act in terms of giving the appropriate notice regarding entry under section 163 of the MRA.

The evidence indicated that the Applicants failed to give notice of entry to the Mining Registrar, such evidence not being contested. It was submitted amongst other matters that these are issues that are important to the landowner and miner relationship and cause anger and frustration etc. Regarding the notice of entry, Kingsley stated in evidence that they had good relations with Mr. Wardle in the early days when entering on the land. It

appeared from the evidence that the Applicants had not entered the lease area for some time due to the objectors' attitude concerning any entry of the applicants onto the land.

From the evidence available, I am satisfied that there has been a breach regarding entry on the land. Any unauthorised entry did not result in any significant consequence.

Given the fact that this application has taken considerable time to get before the Court, and in view of the evidence, one can understand how relations have broken down between the two parties. I am of the view that there has been fault on both sides.

Having regard to the evidence as a whole, I am of the opinion that this is only a minor breach of the Act.

In the circumstances, 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 substantially complied with. (s.392).

I find that I am satisfied that, (a) the provisions of the Act have been complied with, (b) there are now only two (2) valid objections, and (c) the consent of any trustee or other person is not required.

(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 Applicants' advice and I am satisfied on the information given that the purpose for which the lease is sought is appropriate. The Applicants are required to satisfy the Court that mineralisation exists, and that the other purposes are purposes associated with the winning of that mineral. The Applicant, Kingsley gave evidence that he has undertaken costeaning and sampling of the gold reef and obtained encouraging assays. Based on the results of the sampling, the prospect comprises a mineralised zone of at least 2 kilometres. Under cross-examination, Kingsley stated that the whole ore body runs the total length of the lease and that the mineralised zone is just what they'll mine. Further, he said that the area of the lease is not too excessive for the length of the ore body. Apparently, all of the surface area of the Mining lease application will be used by the Applicants for the extraction of gold and other minerals or related activities. I am satisfied on the evidence that the land is mineralised and that the infrastructure is necessary for the purpose of extracting the resource.

(c) Will there be an acceptable level of development and utilisation of the resources within the area applied for?

According to the Applicants, prior to commencement of operations, a plan of operations will be prepared and submitted to the Department of Mines & Energy to ensure that the

ongoing development of the gold mine is correctly carried out. Kingsley stated to the effect that the Plan of Operations is at discussion stage at the moment. He further stated that they do have some plans that they have received from their engineering people.

There were some inconsistencies in the evidence. The EMOS stated that the mining activity would be limited to daylight hours whilst Kingsley's affidavit indicated that the proposed mining program will operate to 24 hours per day on a full-time basis to maximise production and efficiency, subject to seasonal factors and market price. The mining program stated that the operations are to commence within six (6) months after grant of the lease whereas Kingsley in his affidavit stated that they hope to have a mine up and running within 12 months after grant. The building and plant to be constructed on the site include a crusher ball mill and flotation gigs capable of 5-10 tonnes per hour.

Upon a consideration of the whole of the evidence, I am satisfied the Applicants have sufficient resources to progress development to an acceptable level.

(d) Is the area sought an appropriate size and shape?

The shape of the surface area has been designed to be the minimum possible to extract the resource as well as being the minimum required for the practical construction use and maintenance of the facility necessary for the mine. The size and shape of the area were determined having regard to the area of mineralisation and the availability of the resource within the proposed mining lease.

In all of the circumstances, I am satisfied that there is nothing in the information supplied by the Applicants to suggest that the surface area of the land over which the mining lease is sought is not an appropriate size and shape.

There is no evidence of any conflict with the boundary of any other tenement.

(e) Is the term sought appropriate?

The term of lease applied for is ten (10) years. I am satisfied that the term sought is appropriate and will allow for mining and rehabilitation to be completed. The applicants have 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?

The Applicants have to satisfy the Court that they have the necessary financial and technical capabilities, or access to those resources and skills, to carry out the mining operation.

The evidence indicated that the Applicants are self-funded from their own resources, or from the resources of their financiers. Kingsley gave evidence that he had the technical resources to conduct the mining operations on the surface area applied for. Ryan's evidence was that he would be relying heavily on the expertise of Kingsley.

It appeared from the evidence of Kingsley that he has undertaken a considerable amount of work over a number of years in assessing the viability and feasibility of the project.
It appears from the results of the various studies and analysis undertaken that the project is a viable and feasible venture.

Upon a consideration of the whole of the evidence, I am satisfied that the Applicants have the necessary financial and technical capabilities or access to those resources to carry out the mining operation. Mining for gold is basically an extractive industry utilising shallow open cuts and does not require extensive plant, processing equipment, or large injections of capital. The Applicants have been involved in the mining industry for a number of years and in my opinion have 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?

One of the grounds of objection raised by the objectors was that pursuant to the Mineral Resources Act, the holder of an Exploration permit is required to undertake the rehabilitation of the surface of the land disturbed as a result of exploration activities and the holder of the Permit is required to comply with specified Codes of Conduct. The objectors have stated that the Applicants have not discharged their obligations imposed on it under the terms of the act and have failed to abide by the terms of the Code of Conduct. The objectors also said that the Applicants, whilst the holders of an Exploration permit, carried out substantial and extensive excavations on the lands. They stated that many of these excavations remain on the land and have not been rehabilitated. Wardle mentioned under cross-examination that the excavations had been filled in but not properly. It has been suggested that these excavations constitute a danger both to livestock and to humans.

In response to these grounds of objection, Kingsley's evidence was that most of the exposed excavations were already open. He stated that he made the costeans safer for cattle. His evidence was that he asked the Department of Mines & Energy if he needed to fill them. Apparently it was indicated that he did not need to if it was a mining lease application. He also went on to say that the entrance to the old mine shafts were already open. Kingsley further stated in response to Wardle's affidavit that they found a calf in the trench and offered the Wardle's money. They approached the Landowners and compensated them to the value of $300.00 for the week old calf. Kingsley stated that in order to take samples of the ore body, he and the other previous owner arranged for costeans to be dug into the ore body. No new tracks were constructed, preferring instead to use the existing tracks. A number of drill pads were carried out as well as drill holes. To rehabilitate the work, they then contoured and shaped the costeans to make them safe for cattle and humans and temporarily capped the drill holes. Kingsley stated that once the rehabilitation and remediation work was carried out, the Mines Inspectors inspected the work and 'okayed' it.

On that point, the Field Officer from the Rockhampton D.M.E., William Barron ELRICK, gave evidence that he was of the opinion that the open excavations were reasonably safe. Elrick stated that the excavations can be left open and went on to say in evidence that the applicant had fulfilled his obligations. When shown certain photos under cross-examination by Palmer, Elrick agreed that the exposed mine shafts were not safe. In his evidence, Ryan stated that the shafts had been left open for 50 years. Further, he said that the adits were all on the side (of the hill) and at least half a dozen left open. He also went on to say that the excavations made it safer.

There is no evidence of any complaint made by the landowner, and one can draw the inference that by a lack of complaint, the landowner had no genuine concerns at that stage.

Although there were some concerns as to the shafts being left open, it would appear that the Applicants have been bona fide in their attempts to do things correctly and the Department apparently approved what they had done. I also note that Kingsley has environmental awards. Whilst it would seem that the holes could have been made safer, I am satisfied on the evidence that Kingsley acted in good faith, particularly given the fact he received certain advice from the Department. In the circumstances, I am not satisfied that the objection on PAST PERFORMANCE has been substantiated and accordingly, I strike out such objection.

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 exploration title 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.

Grounds of objection have been raised in the form of:

1. Disturbance
2. Blasting carried out on the lands
3. Dust and Noise
4. Uncapped Holes
5. Excavated Mine Shafts

DISTURBANCE

The objectors have stated that the area of mining activity is within 2 kilometres of their homestead. According to them, the operation of machinery and the mining activity generally will adversely affect their quiet enjoyment of the land and will disturb cattle grazing on their property.

According to the affidavit of Kingsley, there is a natural ridge between the mining lease and the homestead. He stated that the mining lease plant is intended to be located approximately 1.2 kilometres from the homestead. The Applicant in the mining operations will not use the portion of Langmorn road directly adjacent to the homestead. Kingsley has indicated that any noise or disturbance or impact upon amenity caused by the mining operation will be minimal compared to the existing disturbance caused by traffic generated noise and dust on Langmorn road. Apparently, this road also services a quarry operated by the Fitzroy Shire Council.

As I understood the evidence, Elrick when questioned on the issue of DISTURBANCE, stated that it may affect the landowners quiet enjoyment but not adversely. In addition there are management strategies such as buffer walls and vegetation barriers that can be put in place to minimise any disturbance.

The issues raised by the objectors regarding such ground of objection may be more relevant to the question of compensation.

Having regard to the evidence as a whole, I consider that the evidence is insufficient to substantiate such ground of objection.

BLASTING CARRIED OUT ON THE LANDS

This ground of objection stated that the mining operations include blasting which is likely to cause damage to buildings and other fixed improvements such as bores and will cause disturbance to the grazing of cattle on the lands. In his affidavit at paragraph 37, Wardle stated that he believed that because of the proximity of concrete tanks to the Mining Lease application area blasting could cause concrete tanks to crack and thus become unusable and that bores on the property could cave in. On this point, Kingsley stated in evidence to the effect that the Applicants would replace tanks and troughs under conditions of a lease.

Wardle went on to say in his evidence that no details are shown in the EMOS or any other associated documents as to what actually will be done by the Applicants to minimise the adverse affects of blasting.

It appears from the evidence available that this is a small-scale mining operation. Blasting is to be kept to a minimum. Elrick who had been a shotfirer for 18-19 years stated that he did not think that blasting would affect the landowner in any way. He also said that there were safeguards in relation to blasting.

It was submitted by Counsel for the Applicants that industry and legislative safeguards have to be put in place in relation to blasting and mining operations and that those will be adhered to entirely. It is noted that there are severe penalties for failing to adhere to these requirements.

Upon a consideration of the evidence, there are no matters that have been raised that would lead me to make an unfavourable recommendation on this ground alone.

DUST AND NOISE

This ground of objection indicates that dust and noise created, as a result of mining operations will adversely affect cattle grazing on the lands. The facts and circumstances, which support such ground is that, the application for the mining lease shows that the mining operation will be conducted 24 hours a day and processing consisting of crushing and milling will be conducted on the lease. It has been suggested that these activities will create substantial noise and dust which will adversely affect the grazing of livestock on the property. The objector stated in evidence-in-chief that he had concerns if the mine runs for 24 hours a day. He also stated that he did not know where the mine was going. Wardle gave evidence that there was dust on the land when drilling rigs were there during exploration. He further stated to the effect that a dam could not be put on the area because the country is porous. Under cross-examination he agreed with Applicants' Counsel that he didn't know much about dam construction but reiterated that a dam would not work as the country is porous. When questioned further, he was not prepared to swear a dam wouldn't work.

As stated previously, it appears that any noise or disturbance or impact upon amenity caused by the mining operation will be minimal compared to the existing disturbance caused by traffic-generated noise and dust on Langmorn Road.

Management strategies can be put in place to minimise any dust and noise and in any event may be subject to the question of compensation.

Upon a consideration of the whole of the evidence, I am not satisfied that this ground of objection has been supported to any significant degree.

UNCAPPED HOLES

The objectors in their notice of objection state that none of the drill-holes, which were drilled by the Applicant during the course of the exploration, have been sufficiently capped. They say that the Applicant blocked the hole by placing a stone over the mouth of the hole. Erosion is now occurring at the mouth of the hole, and as a result the lips of the drill holes are subsiding and caving in. They go on to say that the drill-holes will soon be exposed and will constitute an extreme danger both to livestock and humans.

Wardle states in his affidavit, that because of the danger which the uncapped boreholes posed to livestock and humans, he has placed a stone over the mouth of the bore holes on numerous occasions.

With regard to this ground of objection, the Applicants rely on the provisions of Section 165(3) of the act.

Section 165(3) of the act provides ‘Unless the Minister otherwise directs, the holder of an exploration permit, or other person to whom an exploration permit applies, who applies for a mineral development license or a mining lease in respect of land included in the exploration permit, is not obliged to comply with subsections (1) and (2) in respect of land the subject of the application unless and until the application is rejected or abandoned.

Kingsley in his affidavit stated that these holes were filled with a temporary cap which at the time, was achieved by plugging with a large rock or stone. He stated that this was accepted practice for temporary capping at the time that this task was undertaken. He last checked the boreholes around the middle of 1998, and there were no unsafe holes apparent. In re-examination, Kingsley said that all the rocks were on the drill holes when he went there last year. Kingsley gave evidence that due to the attitude of the landowner and their treatment of the Applicant and his invitees, access to the property had been limited. Elrick in his evidence when questioned regarding the placing of rocks on holes and whether it was an acceptable practice stated that it was a practice but that he didn’t know if it was acceptable. Under cross-examination, he stated that it was now policy that all holes should be capped and that they now have to have proper caps on the holes. He also added that if a miner has not finished, loose caps are to go over holes.

It was submitted by Mr. Palmer for the objectors that the Applicants failed to make the drill holes safe and that the manner in which they were left were not safe and not consistent with the Code of Practice or the Code of Conduct. He further submitted that the practice of leaving stones on bore holes was not consistent with the Code of Practice of the Code of Conduct.

Whilst this issue is a matter for concern, I am of the opinion that given the practice that existed at the time in relation to the covering of holes that such ground alone is not sufficient to recommend against the granting of the lease. In saying this, I am also of the view that the landowner may not helped his own cause or the Applicants’ cause by his attitude towards the Applicant.

EXCAVATED MINE SHAFTS

Another ground of objection raised was that during the course of the exploration, the Applicant excavated extensively around the openings to numerous old mine shafts. The entrances to the mine shafts have been left unrehabilitated and unfenced and they constitute an extreme danger both to livestock and humans. The objectors further stated that the Applicant has not backfilled the excavations in the manner set out in the EMOS lodged with the application for the Mining Lease. Wardle stated in his affidavit that the

Applicants have not carried out any rehabilitation to the excavations of the entrance to the old mine shafts which they had exposed during exploration. Photographic evidence has been tendered in support of their claims. Wardle also added that the objectors had the mine shafts filled in around 1988-89.

Only the excavated entrance to one of the mine shafts has been fenced out. It was submitted that the Applicants have left excavations or costeans dangerous to both humans and livestock.

In response, the Applicants stated that they rely on the provisions of Section 165(3) of the MRA.

Kingsley stated in evidence, that the entrance to the old mine shafts were open when they got there. He said that he filled in all excavations to the best of his knowledge to a safe standard. Exhibit four (4) which was tendered by the applicants, are photos taken, showing costeans being filled in. Kingsley said that they were filled in to a reasonably safe condition.

Kingsley stated that all excavations carried out by them were made safe for cattle and humans. He further stated that there were many other original shafts and drives on the landowner's land which had no fencing around them prior to the commencement of exploration. These shafts and drives pre-dated the late 1800's.

Elrick gave evidence that he had been to the lease area on two occasions. He stated that there were open excavations that were reasonably safe. When questioned as to the policy of the Department regarding disturbed land, Elrick responded that excavations can be left open if the mine is going to proceed and there is an EPM over it. He commented that where there is a mine, it is pointless backfilling an area which you are going to re-open. Under cross-examination, Elrick when questioned regarding Section 165 of the MRA said that the area has to be left safe and that excavations can be left open. In evidence-in-chief, Elrick stated that the Applicant had fulfilled his obligations in relation to the Act regarding pegging and excavations. Under cross-examination certain photographic evidence was produced to Elrick who agreed that the exposed mine shafts were not safe for livestock and humans and were dangerous. However, Elrick did state he did not think livestock would come down the hill. As I understood his evidence, Evan Ryan, the other Applicant, stated that when he visited the site in 1994/95, he saw up to a dozen shafts on the lease area and that he could tell had not been dug for many years. Some had collapsed and some were big holes. He said to the effect that the shafts had been left for 50 years and that he would not say they were safe for anything including livestock or humans. In relation to the shafts, Ryan also stated that if it had been his property he would have had it fenced off.

Upon a consideration of the whole of the evidence, it appears that Kingsley acted on the advice of the Department and took their word for granted. In Kingsley's favour is the fact that it has been stated and I am prepared to accept the fact that a lot of the excavations and adits were there many years prior to his being involved with the lease area. The evidence, including the photographic evidence, which was produced on the hearing date,

is of concern and the evidence produced is of a substantial degree. I am of the view that such excavations and adits are not safe and are dangerous to both humans and livestock. However against this is the fact that I do not think it is reasonable that Kingsley has to pay for rehabilitation work on the problem areas that have been obviously there some time prior to his arrival. I am also of the view that he acted on the advice of the Department on the premise that his lease area was reasonably safe. I also take into account the time frame involved with getting this matter before the Court. Further, if Wardle had a problem with such matters, I am of the opinion that he should have complained to the appropriate authorities for the matter to be rectified immediately rather than waiting until the matter came before the Court. In that regard, there is no evidence of any such complaint.

I have no doubt that if the circumstances were different, that I would uphold this ground of objection. However given the facts in this matter, I am of the view that such evidence is not sufficient to recommend against the granting of such application.

The general nature of the land is described as containing hills and valleys. Natural as well as some improved grasses exist on the land. 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. On the whole of the evidence, I have 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.

A ground of objection has been lodged regarding erosion.

EROSION

The objectors have stated that substantial erosion has occurred on the roads and in the excavations created by the Applicant. The objectors have said that because of the erosion, topsoil has washed into the creeks and other watercourses.

Wardle stated under cross-examination to the effect that there was nothing wrong with the road until Mr Kingsley came on to the lease. He went on to say in evidence that erosion wouldn't have taken place if Kingsley hadn't removed the banks. The objectors also state in their ground of objection that the roads have not been constructed in the manner set out in the EMOS lodged with the application for the mining lease. In his affidavit, Wardle stated that as a result of the removal of drainage banks by the Applicants during exploration, there had been substantial erosion occurring on the road and the road is now becoming impassable to vehicles in a number of places. He stated that the erosion is so deep that it also constitutes a danger to livestock and humans etc.

In response to the objection, the Applicant has stated in his affidavit that such concerns are covered by the Miner's EMOS commitment. Kingsley will carry out all mine management in relation to the lease. In this regard, the Applicant, Kingsley received an award in 1995 from the Premier for Environmental excellence. Further, Kingsley has received a number of accolades and government commendations.

Under cross-examination, Kingsley said that there was no more erosion then what there was when they first got there. He also said that the drainage banks were eroded when they went in to the lease area as well.

Kingsley stated that prior to commencing exploration in relation to the EPM, he had to grade the existing roads where necessary as they were severely eroded. He mentioned that the existing tracks are prone to seasonal erosion and require grading regularly in order to maintain access by machinery. In his affidavit, Kingsley stated that after the original exploration work was carried out, the road was in a good state of repair and was inspected by a Mines Department Inspector and passed. It was submitted on behalf of the Applicant that the Applicant moved one drainage block for the drilling machine to gain access and that this is an area where one can expect erosion.

The evidence indicated that the proposed mining activity is approximately 900 metres 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 according to some of the material before me. However, Kingsley has stated in evidence that chemicals will be used. There are no other environmental factors of significance, which may be adversely affected by the operation, that have not been addressed in the EMOS. It would appear on the evidence that erosion is a problem in the lease area, however, I am of the view that this may be addressed by adequate commitments in the EMOS.

In the circumstances, I am satisfied that there has been a substantial amount of evidence on the issue of erosion, however, on that ground alone it is not sufficient to recommend against the granting of the lease.

(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 ground of objection as to **BLASTING** has been addressed under sound land use management and I consider that it has been adequately covered under that section.

(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, subject to EMOS discounts will be imposed to guard against financial failure of the miner to ensure rehabilitation is completed.
- The Applicants appear 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 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

There were a number of grounds of objection raised in relation to this application by the landowners Mr. & Mrs. Wardle.

A number of submissions were made regarding certain provisions of the Act including Sections 141 and 165 as well as the Code of Conduct and the Code of Practice. I indicated to the parties at the outset of the hearing what my opinion was regarding the matter of exploration activities.

During the course of final submissions, I was referred to the decision in MLA 70151 (Humbolt) wherein I listed a number of reasons for recommending that the application be rejected.

It is evident that the Code of Conduct and the Code of Practice are to be read in conjunction with the Mineral Resources Act and accompanying Regulations.

In this matter, Kingsley gave evidence as to the advice he received from the Department of Mines and Energy regarding the lease and the provisions of section 165 of the Act. Evidence was also adduced from William Elrick and Louise Webber, both being employees of the Department of Mines & Energy, Rockhampton.

I found Kingsley to be a credible witness taking into account his evidence and his demeanour whilst in the witness box. I am of the view that he was forthright and confident whilst he was giving his evidence. There were some discrepancies in the evidence that I have commented on, however, they had no significant impact on the outcome of this matter.

Looking at the evidence as a whole, I consider that if the lease were to be granted, the Applicants would have no difficulty complying with any requirements that may be imposed by the Minister or the Department of Mines and Energy and would also perform at a satisfactory level in the future.

Whilst some of the grounds raised by the landowners are of a sufficient weight to cause concern, namely uncapped holes, erosion and the excavated mine shafts, such issues alone or coupled together are in my opinion, not sufficient to recommend against the granting of the mining lease application.

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 silver ore, gold, copper ore, lead ore and associated infrastructure for a term of TEN (10) YEARS. (s.270(2)), subject to compensation being settled between the parties or determined by this Court.

Dated at BRISBANE this 29th day of March 1999.

A.J. CHILCOTT
ACTING MINING WARDEN

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