

**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 80055) IN THE ROCKHAMPTON  
DISTRICT**

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

**APPLICANT:**                 **HAROLD BRUCE CLARK**

**OBJECTORS:**                **STANWELL POWER CORPORATION  
JEFFREY RONALD HUME**

**CATCHWORDS:**              **MINING LEASE – BUILDING STONE –  
DECLARATION OF POSTING LODGED OUTSIDE  
LIMIT – NO PREJUDICE – CONSIDERATION OF  
AGE OF APPLICANT IS DISCRIMINATORY –  
LACK OF FINANCIAL RESOURCES – PREVIOUS  
SIMILAR OPERATION ON SAME AREA RUN AT  
FINANCIAL LOSS – LACK OF MARKET  
RESEARCH – PAST PERFORMANCE – WEED  
CONTROL – RARE OR ENDANGERED FLORA –  
EXPLOSION DAMAGE – NATURE REFUGE  
ALONG ACCESS – PRIVATE INTEREST AGAINST  
PUBLIC INTEREST – CREDIBILITY OF  
APPLICANT – RECOMMEND REJECTION DUE TO  
LACK OF FINANCIAL AND TECHNICAL SKILLS**

*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 BULDING STONE, and for the establishment of infrastructure namely SILT DAM, WATER SUPPLY, WORKSHOP, ORE STOCKPILE and TOPSOIL STOCKPILE. The application is for surface area of 9.56 hectares and is situated on LOT 1 on RP 616642 being freehold land in the County of LIVINGSTONE, Parish of STANWELL. The application area is about five kilometres south of Stanwell. Access is off a public road and through land held by the Stanwell Corporation. The lease is to be known as “Black Boulder”.

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. 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 26 MAY 1998. A certificate of application was issued on 16 JULY 1998 (s.252 (1)) setting the last date for receipt of objections as 13 AUGUST 1998. (s.252(2)).

Two objections were lodged pursuant to section 260(1) of the Act. Both objections were lodged within time and the Applicant miner acknowledges receipt of copies of those objections.

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 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 Section 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)). An electricity easement crosses the application area. The easement comprises one 132kV and 2 x 275kV-transmission lines on pylons, with the provision for an additional high voltage line on the southern side of the easement. However, by their letter dated 18 November 1998, Capelec has no objection to the application provided certain conditions are met.

At the time of marking out and lodging the application, the Applicant was the holder of PROSPECTING PERMIT 80182 (s.232(1)).

A declaration of posting was lodged on 15 October 1998 (s.252(9)), almost two months outside the seven day limit imposed under section 252(9). There is no notation that any longer period was authorised by the Registrar. The Applicant did not offer any explanation. This lapse was not raised as a ground of objection. In any event, it appears that no person has been disadvantaged by the failure to lodge within time, and nothing turns on that point. 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).

The hearing took place at Yeppoon on 8<sup>th</sup> and 9<sup>th</sup> of December 1998 after an on site inspection was conducted on 7<sup>th</sup> December 1998 in the presence of the parties. The Applicant appeared without legal representation and gave evidence on his own behalf. The objectors appeared with representation, gave evidence on their own behalf and called evidence from others.

**(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 is necessary to assist in the winning of that mineral. (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 over an area of land previously held by the Applicant as a mining lease, and extends a little further. The Applicant is required to satisfy the Court that mineralisation exists, and that the other purposes are purposes associated with the winning of that mineral. The Applicant produced evidence that he has extracted product from the lease area under his old lease and sold that product into the market. The other purposes are required to facilitate the extraction of the product. I am satisfied 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?**

Evidence from the Applicant suggested that he would be able to continue to produce from the lease area as he had in the past under his old lease. There is evidence to show that blocks of stone were extracted and sold into the market. It is a subjective assessment on whether the level of development is satisfactory given the nature of the resource and market situation for the product at any given time. I propose to deal further with this aspect in paragraphs (f), (g) and (l).

**(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 Applicant seeks to place the new mining lease over the area contained in the old lease, and then takes in an additional area he says will cover other parts of the deposit. The application area contains some 9.56 hectares in total. Towards the close of the hearing, the Applicant sought to abandon that part of the application that was the cause of concern to the landowner/objector. This course of action was rejected as being unfair to the objector who had rightly prepared his case on the material before him. The

offer was too little and too late, and the appropriate time for such concessions or actions was at the conference which was conducted on 16 October 1998.

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 21 years. I am not satisfied that the term sought is appropriate. Obviously a long term is required to allow for mining and rehabilitation to be completed, and to guarantee long term supply. Mining may well be intermittent. However, in view of the lack of evidence of a defined deposit, I would recommend only a term of 12 years be considered. Any consideration of the age of the Applicant as a matter to argue against a long term lease is discriminatory, and I must reject that approach. The Applicant has the option of renewal under s.286 of the Act, 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 Applicant produced no hard evidence of his financial resources. He appears to rely on the possibility of a joint venture operation with another person, and produced a form of an alleged contract between himself and a person named Seierup. The alleged contract (Exhibit 1) bears several notations about changes and it appears to be a document on which no reliance could be placed as a legally binding arrangement between the parties.

The Applicant states in Part B (attached to the questionnaire and related to financial resources) that he expected to receive \$30,000 for the sale of a block of land. He admits in cross-examination that some of that sale price has not been received in cash, some of the proceeds are still owing, and some of the cash was used on the car and to pay off other small debts. It is apparent that there is little or no cash available to commence operations.

The Applicant has to satisfy the Court that he has the necessary financial and technical capabilities, or access to those resources and skills, to carry out the mining operation. It is a fact that the Applicant has worked for a number of years in the quarry industry (Exhibit 8) where his experience appears to be limited to "drilling and firing". At least one witness referred to Mr Clark's experience as a driller and firer and the activities conducted by him on the previous lease. A "building stone" quarry is basically an extractive industry, and involves the removal of overburden, exposure of the stone through the development of a bench or face, and cutting and extraction of that exposed stone. Such an operation does require a range of various plant and equipment, while processing is usually done off site in a factory situation by other commercial enterprises. Large injections of capital are required at the "start-up" phase, unless the operators have that equipment available or can hire such equipment. While the Applicant worked in quarries for a number of years and appears to 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*], there is little doubt that the proposed operation, based on the past performance of the Applicant in relation to the previous lease (ML 7529), raises some serious questions about his managerial and marketing skills. Mining Lease 7529 was in existence for five years, having expired on 28 February 1998. The Applicant therefore had a perfect opportunity, while that lease was current, to demonstrate the potential of the area and his expertise. The evidence indicates that based on royalty returns, the financial receipts did not exceed \$60,000 for the five years that the lease was in existence. Evidence from other witnesses indicates that a number of debts in relation to work carried out on ML 7529 are outstanding although Mr Clark disputes the basis of most of these financial arrangements, and denies that any money is owing. On the evidence that is before this Court, it appears that the whole operation on ML 7529 ran at a financial loss. An assessment by Grillmeier (called for the objectors) indicates that capital investment of \$300,000 to \$400,000 would be needed to get the operation up and running. While prices for similar quality stone had been around \$1000 per cubic metre in years past, the current price in Australia is in the vicinity of \$500 to \$600 per cubic metre. The Applicant could not give any firm evidence on market research or surveys undertaken by him, but appears to rely for his sales revenue on whatever would be the market rate at the time of sale.

**(g) Has the past performance of the Applicant been satisfactory?**

There is material before me to suggest that the past performance of the Applicant has been unsatisfactory on a number of matters in relation to the operations conducted on ML 7529. It depends to some extent on an interpretation of the words "past performance". There is no evidence to show that Clark has been issued with any show cause notice, or prosecuted for any breach of the MRA. The landowner takes some issue with the performance of the Applicant in relation to erosion control and weed control. He has also raised the issue of excessive rubbish in the lease area, inadequate fencing, illegal mining, the storage of explosives, and the entry of trespassers during the term of the first lease. On an overall view, these items can be dealt with by way of cautions or infringement notices, notwithstanding that they are matters of "concern" to any landowner involved. If the lease is granted, it is expected that the local Field Officer and Environmental Officer will be available to monitor performance and rehabilitation and report any breach of conditions. The need to regularly inspect and monitor operations by Field Officers and Environmental Officers appears to have been neglected in the past in some districts, with the result that many minor incidents tend to become major incidents or serious breaches of the act and regulations within a very short time. 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.

Prior to the issue of the lease, departmental records should be checked to ascertain if the rent, royalty and rehabilitation history of the Applicant is satisfactory.

**(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 prospecting permit 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 grazing purposes under favourable conditions, and it seems the proposed mining operation will cause no significant disturbance to stock or stock watering or management facilities. Obviously the grazing activity continued while extraction was conducted on ML 7529 for five years, although extraction appears to have been of an intermittent nature. The general nature of the land in the application area is described as "hilly and rocky outcrops with a small quarry" (the Applicants description). There is no area of arable top soil of any significant size, given the rocky nature of the outcrops.

The landowner conducts a grazing operation on the land, principally breeding and fattening of cattle. Mr Hume gave evidence that he maintains a breeding strategy where all matters in relation to the herd are recorded. His intentions are to keep out the weeds and maintain good pasture so he can supply the market at any time. Mr Hume indicated he wanted to object to the original application (ML 7529) but after receiving some assurances from Mr Clark in relation to access gates, fences, weed control and road improvements, he decided not to object. Basically, I gained the impression that for the term of the first lease, the two parties co-existed although Hume saw evidence that problems were starting to emerge, and this has heightened his concerns about the proposed future operation.

The Applicant produced some documents in relation to previous drilling and the indications of a body of granite under the surface. It therefore appears that there is a resource "in situ" capable of being extracted, and that with suitable precautions in relating to fencing out access to the pit or face area by cattle, the land could be utilised for block extraction.

**(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 if the proper control mechanisms are put in place. The landowner has some concerns about erosion, and the evidence seems to indicate there has been some erosion as a result of past mining operations. Rectification of this erosion damage has been slow, but for some time the previous lease has been expired with little or no activity

on the old area. In effect, the Applicant had no authority to conduct any type of operation on the area until the current application is considered.

The objector called evidence in relation to the spread and control of parthenium weed. I understand that eradication is not an option, but control is. The landowner gave evidence of his attempts to control the spread of parthenium weed in the area adjacent to the lease. It appears there are also isolated weeds in the land held by Stanwell. The Applicant seeks access through this land. He utilised the same access during the currency of operations on ML 7529. Of some concern is the attitude of the Applicant. He states that he is always on the lookout for the weed, and informs others to also watch for the weed. He states he has in the past and will in the future spray any outbreak on the mining lease area. He always parks his vehicle in the same place in order to watch for any outbreak that might have started off from seeds brought in by vehicle. However, another witness related evidence of Mr Clark's lack of care after he had visited and driven through parthenium infected areas in Central Queensland. The landowner considers the miner is responsible for the introduction of parthenium into the area. However, I note his claim of entry by trespassers, and I note that entry by others is possible through the power easement.

**(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 some rare or endangered flora close to or within the application area, although growth within the application area might be subjective. The objector landowner currently conducts a grazing operation in the adjacent area, so it seems that the flora is not going to suffer from multiple use, otherwise stock and fauna would have to be removed. It would be safe to assume that a plant is more likely to be eaten by a cow than a Komatsu. There are three transmission lines running through part of the application area. This appears to not be a problem as long as some simple conditions are met. The objector landowner has raised the issue of visual amenity in respect of the mining operation, but in effect the presence of the power transmission lines and associated pylons would also affect visual amenity. There are no other public utilities on or across the application area. There are no sites of historical interest or aboriginal significance within the application area. If any such sites are identified, the EMOS can be amended to put forward specific site protection or site avoidance strategies. Due to the fact that mining has been conducted on part of the application area for a term of five years already it is unlikely that there are any such sites that need protection or avoidance strategies.

The use of explosives did initially cause some concern, given the Applicants record in this regard. However, it has been explained by a witness who holds the appropriate licence that the use of explosives in the dimension stone industry is very limited, as any large or uncontrolled force would affect the quality of the product. In this instance small amounts of explosive or other substances are used to "crack" the blocks, and there would be no risk to or likelihood of damage to the pylons or transmission lines.

In respect of access, the operators of the Stanwell Power Station (Stanwell) have established a nature refuge adjacent to the mining lease application area. This refuge was

established after the grant of ML 7529. Access to ML 7529 was through this land, and the new application seeks the same access. Stanwell objects to use of the same access. The grounds of this objection generally relate to disturbance of native fauna introduced into the refuge, damage to the access road by heavy and consistent vehicular traffic, and spread of noxious weeds. In fact, in relation to traffic and the re-location of certain fauna, the comparison was made to general highway traffic. This was grossly unfair to Mr Clark, as at no time in the past operation or the proposed operations is it envisaged that there will be traffic on the access road travelling at the volume and speed of highway traffic. It appears that some persons are prepared to presume the worst possible scenario whereas common sense dictates otherwise. At the best, it can prove that those persons know little about the circumstances, and at worse, such an attitude can render the balance of their evidence suspect.

In any event, if the lease is recommended by the Minister to the Governor in Council, access could be changed to that route that follows the power easement. It was observed during the inspection that access through this route would be possible although it would require a new access road to be constructed. Although this will double the amount of land disturbed, it will take traffic out of the nature refuge. I am at a loss to understand why such a solution was not considered prior to the hearing.

There was evidence from a witness for the objector Hume about the establishment of the Rainbow Mountain Nature Refuge on his property. It is hoped that this project will contribute to preservation of certain flora and that the landscape, flora, and fauna will be of interest to tourist groups or study groups as part of an eco-tourism situation in the future. The witness Glenmary Swan gave evidence about the requirements of such a refuge and the nature of the flora that will be protected. Such activity is to be commended, but whether that land use over-rides the public interest in non-sterilisation of resources might be a different matter. In view of the content of my final recommendation, it is not necessary to consider that point any further.

**(1) 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. However, when all other aspects of the application and the matters referred to in s.269 are taken into account, I am not 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 following reasons:

1. While a small scale operation is planned, the Applicant lacks the financial resources to complete the development of the lease and utilisation of the resource to a satisfactory level.
2. It is unlikely that the land applied for is of any interest to a large scale miner with greater resources because the resource is comparatively small in size.
3. The Applicant does not appear to have sufficient managerial expertise in the industry to accurately assess the potential of the project, and the Applicant is unable to point to

any market research or firm sales contracts without which the proposed development may fail.

In my view, 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 provided the appropriate controls are in place for parthenium, erosion and the fencing of dangerous areas.

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, including documents and oral evidence. While applications under Part 7 usually do not raise any issue of credibility, I found that the Applicant was evasive and vague on a number of occasions. When past scenarios were put to him, there was the excuse that it was the fault of others, that others did not obey his instructions, or that the paperwork was lost or destroyed. From the evidence of other witnesses which I found to be reliable, it appears a number of persons were involved in the previous operation at various times, that there were insufficient funds to open a face and therefore surface boulders were cut, leading to some problem with quality. It appears that Mr Clark exercised little managerial control over the past operation, and there is no reason to believe that the same state of circumstances will not exist on the new application area. There were some admissions in relation to the storage and use of explosives and the cutting of a block of granite adjacent to but outside the boundaries of ML 7529. Mr Clark always had innovative excuses for these breaches, but nevertheless, his conduct was not that of a responsible miner.

There is evidence to suggest that a resource is available and the quality would be acceptable. However, the resource must be extracted from deeper ground. It also appears the resource is small in area, and may not justify the start up costs unless an operator has the necessary equipment available.

The evidence given to the Court is sufficient to raise some concerns about Mr Clark and his conduct on other leases or tenures under his name. There is also the allegation that threats of personal violence were made in the presence of others against DME staff. It

appears that these threats, denied by Mr Clark, were idle and there was little or no follow up action by the Police.

It is recommended that all other leases and tenures held by Clark be inspected and a written report be placed on file in relation to those inspections. Any breaches or lack of compliance should be acted upon in the appropriate manner.

This case highlights the importance of having Field Officers and Environmental Officers visit leases and exploration tenures on a regular basis to observe and report any breaches or environmental concerns before the breaches or concerns become major issues. It was always intended that Field Officers were to be the "eyes" and "ears" of the Department out in the Field. It is hard to "see" and "hear" if they are not out there, and the chance to detect and prosecute for any breach of the *MRA* and regulations is lost if the evidence is not gathered.

**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 application 80055 be refused on the following grounds:**

- 1. The Applicant Mr Harold Clark has failed to satisfy the Warden that he possesses the necessary financial and technical skills necessary to develop the project and complete the mining operation (s.269(4)(f)).**

**Dated at BRISBANE this 3<sup>rd</sup> day of February 1999.**

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

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