

**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 70211) IN THE EMERALD DISTRICT**

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

APPLICANT: **KELVEN JOHN WEIR 50%
GLENN RAYMOND RASMUSSEN 50%**

OBJECTOR: **RODNEY KEITH BARRETT**

CATCHWORDS: **MINING – MINING LEASE –RECOMMENDATION –
UNDERTAKINGS**

Mineral Resources Act 1989

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

REPORT:

The applicants (hereinafter referred to as the miners or applicant miners) seek a mining lease under the provisions section 234 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, GOLD, DIAMOND, SILVER ORE and LEAD ORE. The applicants also intend to place certain infrastructure on the lease namely a TREATMENT PLANT and TAILINGS DAM. The application is for surface area of 71.2743 hectares and is situated on LOT 63 on PLAN Pt358, County of PLANTAGENET, Parish of ANAKIE, and LOT 5 on CLM 597, County of CLERMONT, Parish of KEILAMBETE. Access is off Graveshill Road and then through the properties. The lease, if granted, is to be known as “SHE’S LOADED”.

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 27 SEPTEMBER 1999. A certificate of application was issued on 30 NOVEMBER 1999 (s.252 (1)) setting 11 JANUARY 2000 as the last date for receipt of objections (s.252(2)).

One objection was lodged pursuant to s.260(1) of the Act by Rodney Keith BARRETT. The objections will be dealt with at the appropriate stages of the following 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 both the applicants are eligible persons as defined in s.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. 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 on the land as defined in s.5 requiring the consent of any person (s.238(2)). However, there are a number of relevant features on the land and the applicants do not have consent to include these features in the lease area. The lease, if granted by the Hon. the Minister, will exclude these features and an area of 50 metres surrounding these features.

At the time of marking out and lodging the application, at least one of the applicants was the holder of PROSPECTING PERMITS 71123 and 71124(s.232(1)).

A declaration of posting was lodged on 13 JANUARY 2000 (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).

The hearing took place at Emerald on 29 MAY 2000 at 2.00 pm after an inspection of the application area at 10.00 am the same day.

(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 gem bearing. The lease application area is adjacent to the Graves Hill Fossicking area. Part of the area on Sloan's property (Lot 63) has been disturbed by 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 resources within the area applied for?

From documentation lodged with the application, I am satisfied the applicants have sufficient resources to progress development to an acceptable level. The applicants intend to use contractors when heavy machinery is required.

(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. About 36 hectares of the lease is in the property owned by Barrett (Lot 5) and 35 hectares of the lease is in property owned by Sloan (Lot 63).

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 initial term applied for was 10 years. However, the applicants have requested that the term be reduced to 3 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 of the Act, or surrender at an earlier date under section 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 applicants have 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 applicants have mined sapphires for a number of years. The applicants have worked for other persons engaged in the industry, and in my opinion has the experience necessary to complete the mining operation. [*Carr -v- Simnovec* (1980) 26 SASR 263 at 268, and *Pacminex -v- Aust. Nephrite Jade Mines* (1974) 7 SASR 401 at 415].

(g) Has the past performance of the applicant been satisfactory?

There is no material before me to suggest that the past performance of the applicants has been unsatisfactory. The local Field Officer and Environmental Officer will be available to monitor performance and rehabilitation and report any breach of conditions. The Inspectorate should monitor the methods adopted for mining, ensuring that industry standards are maintained and that licensed persons operate all machinery in a safe and competent manner.

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

At least one of the applicants was the holder of the relevant pre-requisite title under s.232 of the *MRA* at the time of marking out. It does not appear that the holder of or applicant for any other exploration permit or mineral development licence has been affected.

(i) Will the operations to be carried on under the proposed lease conform with sound land use management?

The land appears to be used for grazing under favourable conditions, and it seems the proposed mining operation will cause significant disturbance to stock or stock watering and management facilities due to these relevant features being within the application area. The general nature of the land is described as "slightly sloping onto flat country – some buffel grass, patchy spear grass and others". Recent rains and flooding has promoted the growth of a good cover of grass, particularly buffel grass. Stock fodder is generally of good quality on the application area. There is a considerable growth of *Parthenium hysterophorus*. However, the area mined can be rehabilitated to its pre-mined condition, in my opinion, and therefore the proposed operation conforms to sound land use management.

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 provided mining and rehabilitation is carried out as per the EMOS.

(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. This operation stands alone and is not part of any project.

The proposed mining activity is in an area away from human habitation although residences are nearby at Graves Hill. The mining will not have any deleterious effect on any river or creek system provided the applicants take only the water they need and

recycle that water through their plant. Chemicals will not be used in the mining process. 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 applicants will be required to backfill where possible as mining progresses, keeping outstanding rehabilitation to a bare minimum where possible.

By section 35 of the *Mineral Resources Regulations 1990*, the applicants are required to maintain the lease and access free of *parthenium* weed and any other weed declared under the *Rural Lands Protection Act 1985*. It was noted at the time of inspection that there is a considerable growth of *parthenium hysterophorus* on parts of the application area. The only option for the applicants is to undertake to attempt to keep the rehabilitated area reasonably free of *parthenium* during the term of the lease. Control methods and the hormone to be used should be those approved by the landholder.

(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 applicants. 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 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.

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*). The applicants have indicated that they are prepared to give the landowner certain undertakings to alleviate his concerns.

(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, and the issue of compensation therefore remains outstanding between the parties. An agreement is required between the miners and each landowner.

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 compensation, and if necessary, injunctive relief under the powers contained in s.363(6). The miners have indicated that no living quarters will be erected on the lease. If this does happen, then such structure is to be regarded as temporary and removed at the conclusion of mining and rehabilitation.

A significant part of the lease that is on Sloan's property has been disturbed by previous mining. The miners indicate that they will be rehabilitating the old workings as part of their mining operation. Mr Sloan apparently does not object to this proposal, and the inspection indicated that rehabilitation would improve the visual amenity of the land and restore some grazing capacity at the same time.

THE OBJECTIONS:

The landowner raised a number of objections as per his form of objection and in a letter accompanying that form. I will deal with each objection and the miner's response hereunder:

1. The lease is above a large dam and silt will erode into the dam. The miner indicates that silt and erosion strategies will be put in place to prevent erosion.

2. Water will be held in the mining lease and not flow into the dam. The miner has indicated that steps will be taken to ensure that water runoff will at all times flow into the dam.
3. The lease area is over the only fattening country on the freeholding lease and has good soil along a creek flat. This is a matter touching on compensation. However, the miner undertakes to back fill and rehabilitate as mining progresses. This should ensure that only a small area is taken out of production at any one time. Under the EMOS, only a small area is to be opened up at any one time for mining purposes.
4. There are substantial improvements on the area including a set of yards which are the only ones on the block and as such they are in use. There are also troughs, a windmill and tank located close to the yards. Access to the yards and watering facilities will be cut off. Cattle trucks with double decker "dogs" need to access the yards and a turning area. The objector would prefer another set of yards be built on a different part of the block. The miner indicates that the 50 metre zone will be maintained and the landowner will at all times have access to the yards and improvements.
5. The lease is across a major waterway and the mining will cause erosion of the fragile soils. The miner indicates that steps will be taken to reduce erosion.
6. The mining will affect the new fencing on the boundary of both properties. The miner indicates that the fences will be maintained and left intact. The miners indicate that they will mine and rehabilitate the objector's property before moving up to the other property.
7. Dust from the mining operation will settle on pasture making it useless for cattle. The miner indicates that dust suppression and control is contained in the EMOS.
8. The mining operations will render the holding yards useless for holding and grazing as the fences will be destroyed. I have no record of the response to this objection. However, the holding yards form part of the cattle yards that are the principal stock yards on the holding. Therefore there can be no mining activity within 50 metres of the fences of the holding yards.
9. Persons who use the Graves Hill Fossicking area take water from the tank and their access to this supply will be stopped by the mining. The miners indicated that they would not stop any persons from obtaining water from that supply.

The landowner further raised the issue of contractors coming on to the lease and this could lead to problems. The miners indicated that they would supply the name of any

contractor engaged by them to do work on the lease. It was also confirmed that any such contractor would be personally supervised by at least one of the miners.

Provided the miners give a written confirmation that they will at all times abide by the following undertakings, then there is no reason why a recommendation should not be favourable. The undertakings should be in the following form, lodged with the Registrar with a copy sent to the objector.

1. Silt traps and erosion controls will be put in place to ensure that silt does not wash into the dam.
2. The miners will at all times ensure that there is a free flow of water from rainfall run off into the dam for grazing use.
3. The only land opened for mining will be in accordance with the EMOS and backfilled and rehabilitated as soon as possible to restore that land to as near as possible to its pre-mined use. Where seeding takes place, pasture grasses shall be of the variety or type as nominated by the landowner.
4. The miners shall at all times observe a 50 metre buffer around all improvements including the principal stock yards and ensure that at all times the landowner has access to the yards for the working of stock or transporting of stock from the yards by truck.
5. Boundary fencing and internal fencing will not be unduly interfered with but where that is necessary, such fencing shall be re-located along a line nominated by the landowner. All fencing to be restored and re-aligned at the conclusion of mining if it has been affected during mining.
6. Where necessary, grids of a suitable type shall be erected if carting material from the property to another plant. Any material removed from Barrett's property is to be returned after processing.
7. The name of any contractor engaged to use machinery on Barrett's property shall be given to Barrett at least 48 hours before the commencement of work, and such contractor will be under the personal supervision of at least one of the miners whilst on the property.
8. Control of parthenium shall be at a time and by means approved by the landowner.

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 but excluding relevant features for the purpose of mining for **SAPPHIRE, ZIRCON, GOLD, DIAMOND, SILVER ORE, LEAD ORE, and for the establishment of infrastructure namely **TREATMENT PLANT** and **TAILINGS DAM** for a term of **THREE YEARS**, subject to compensation being settled between the parties or determined by this Court. (s.270(2)).**

Dated at BRISBANE this 31st day of MAY 2000.

F.W. WINDRIDGE
MINING WARDEN

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