

**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 30203) IN THE GEORGETOWN  
DISTRICT**

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

**APPLICANT:**                **TRIUMPH RESOURCES NL**

**CATCHWORDS:**            **MINING LEASE – OBJECTION STRUCK OUT –  
NON APPEARANCE – ROAD MAINTENANCE – “AS  
OF RIGHT USAGE” – NO JURISDICTION OFF  
LEASE**

*Mineral Resources Act 1989 s. 269*

**REPORT:**

The applicant seeks a mining lease under the provisions of part 7 of the *Mineral Resources Act 1989* (the Act) for the purpose of mining for GOLD, SILVER ORE, COPPER ORE, LEAD ORE, ZINC ORE, and for the establishment of ASSOCIATED INFRASTRUCTURE namely LIVING QUARTERS, WATER SUPPLY, ORE and OVERBURDEN STOCKPILES. The application is for surface area of 50 hectares and is situated on LOT 5026 on PH251, County of EINASLEIGH, Parish of DWELLA and others, being part of Nammarong Holding via Georgetown.

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, although there is the power to determine title to land.

The application was lodged at the Mining Registrar's Office at GEORGETOWN on 22 JUNE 1998. A certificate of application was issued on 17 JULY 1998 (s.252 (1)) setting the last date for receipt of objections as 28 AUGUST 1998. (s.252(2)).

This matter was listed for mention before the Warden's Court at Mareeba on 15 October 1998. On that date the applicant failed to appear and the objector Etheridge Shire Council failed to appear. The Registrar was advised by the Shire Council that they did not intend to appear or pursue their objection. On that basis, and to avoid further delay to the applicant miner, the matter was adjourned for recommendation. The objection was struck out on the grounds that the objector failed to appear having advised the Registrar that they intended to pursue the matter directly with the Minister for Mines and Energy. There were no other objections lodged pursuant to section 260(1) of the Act. 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 section 232 of the Act.

I accept, on the material before me, that the land applied for is not within a reserve as defined in the Act, and that there is no relevant permanent building or relevant feature as defined on the land. (s.238(1)).

I find that the Application is therefore not in respect of land over which, pursuant to s.238(1) of the Act, a mining lease shall not be granted without the consent of another person or persons. The land is not on a reserve and does not have any restricted land status.

At the time of marking out and lodging the application, the applicant was the holder of Exploration Permit 9158 (s.232(1)).

A declaration of posting was lodged on 7 SEPTEMBER 1998 (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).

I find that I am satisfied that, (a) the provisions of the Act have been complied with, (b) there is no valid objection, 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 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 recognized as gold bearing. The applicant indicates the area was extensively explored by others including Rio Tinto Exploration Pty Limited. Programs included stream geochemistry, rock chip sampling, RC and diamond drilling, costeaning, ground and airborne geophysics. A mineable resource of 42,690 tonnes at a grade of 10.05 g/t Au has been identified. Gold is the main target mineral. Silver will be recovered as an accessory mineral. I am satisfied that there is sufficient mineralisation present 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. Pending the issue of a prospectus, working capital will be funded by loans from the Directors and associates.

**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 area required is over the mineralisation with additional area for infrastructure purposes and environmental buffers.

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.

**(d) Is the term sought appropriate?**

The term of lease applied for is 21 years. I am satisfied that the term sought is appropriate and will allow for mining and rehabilitation to be completed. The applicant is unsure when mining will commence as there are a number of variable factors that might influence that decision. The applicant has the option of renewal under section 286 of the act, or surrender at an earlier date under section 309.

**(e) Has the Applicant the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease?**

From the information supplied, I am satisfied the applicant has the necessary financial and technical capabilities or access to those resources to carry out the mining operation. The current plan of operations is to use contractors to open up the pit with the applicant's staff to manage and supervise. This type of mining is basically an extractive industry utilising shallow open cuts and does not require extensive plant, processing equipment, or large injections of capital. The director of the applicant company has been involved in mining for in excess of thirty 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].

**(f) 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.

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.

**(g) 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.

**(h) 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 marginal grazing 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. The evidence leaves me with no reason to believe that the proposed mining operations do not conform with sound land use management.

**(i) 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. At this stage, it is intended to process the ore off lease at another plant. Due to low rainfall and the method of mining, erosion will not be a problem. There are no other environmental factors of significance which may be adversely effected by the operation.

**(j) 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.

**(k) 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 operation is planned.
- ◆ It is unlikely that the land applied for is of any interest to a large scale miner with greater resources.
- ◆ 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 if appropriate 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.

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*).

**(I) 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. The land appears to be class VII. 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. After rehabilitation, the void left will be utilised as a stock watering point.

A compensation agreement or determination of the Court will compensate the landowner for any conflict or loss over land use (s.281). I note that a compensation agreement has been filed with the Registrar in accordance with s.279 of the Act.

**GENERAL COMMENTS:**

The objection advanced by the Etheridge Shire Council was in relation to use of a road maintained by the Shire Council as part of the access from the Highway. In company with the Registrar, I inspected that road and access to the mine area on 14 October 1998. The road referred to is a public road used by others, including stock transports, and appears to be in reasonable condition. The applicant miner can use any public road on an "as of right" basis, provided the vehicles are registered and comply with the Transport Act and Regulations. There is no power under the *Mineral Resources Act 1989* which allows the Department of Mines and Energy to impose conditions off lease or to enforce a contribution for road maintenance. The Shire Council and the miner can off course come to a private agreement, but that is a matter entirely for them.

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:**

**Having dispensed with the hearing and 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 MINING and ASSOCIATED INFRASTRUCTURE for a term of 21 YEARS. (s.270(2)).**

**Dated at BRISBANE this 5<sup>th</sup> day of November 1998.**

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

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