

**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 MINING LEASES
(NOS. 70204, 70205, 70206, 70207) IN THE EMERALD
DISTRICT**

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

APPLICANT: **GEOFFREY LAURENCE SALMON**

OBJECTOR: **DEAN LINSAY ARMSTRONG and
LISA MAREE ARMSTRONG**

CATCHWORDS: **MINING – MINING LEASE – REJECTION –
MINERALISATION – RESTRICTED AREA**

Mineral Resources Act 1989

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

REPORT:

The applicant (hereinafter referred to as the miner or applicant miner) seeks four mining leases under the provisions of section 234(1) 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 and DIAMOND. The applications are for surface area of 86.73 ha (70204) 71.03 ha (70205) 72.223 ha (70206) and 73.77 ha (70207) and are situated on LOT 8 on CLM 567, County of CLERMONT, Parish of KETTLE, being part of the “Fork Lagoon” holding located about 8 kilometres north east of Sapphire. Access is through the same property. The leases, if granted, are to be known as “Lagoon 1”, “Lagoon 2”, “Lagoon 3”, and “Lagoon 4” respectively.

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 applications were lodged at the Mining Registrar's Office at EMERALD on 18 AUGUST 1999. A certificate of application was issued on 27 AUGUST 1999 (s.252 (1)) setting the last date for receipt of objections as 24th SEPTEMBER 1999. (s.252 (2)).

Objections were lodged pursuant to s.260 (1) of the Act by D L Armstrong and L M Armstrong (the objectors). The issues raised in the objections will be dealt with at the appropriate point in 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 the applicant is an eligible person as defined in s.5 of the act and is entitled to make the application under s.232 of the Act.

The application area is not located on or forming part of any reserve as defined in the *MRA*. I find that the application is therefore not in respect of land over which, pursuant to s.238(1) of the *MRA*, mining lease shall not be granted without the consent of another person or persons. There is no relevant permanent building or relevant feature on the land as defined in s.5 requiring the consent of any person (s.238 (2)), except for MLA 70204. A dam is constructed within this application area, and no consent has been submitted as required by section 238(2) of the *MRA*.

However, the lease application areas are within Restricted Area 1.

At the time of marking out and lodging the application, the applicant was the holder of PROSPECTING PERMIT 71089 (s.232 (1)).

A declaration of posting was lodged on 30 SEPTEMBER 1999 (s.252 (9)), and service of documents was in accordance with s.399.

I am satisfied, on the material, including the uncontested information in the application form and the declaration of posting and advertising that all the provisions of the Act relating to marking out, notification, posting and advertising have been complied with or substantially complied with. (s.392).

The applications and objections thereto were heard in the Warden's Court at Emerald on 7 March 2000. Mr Houen appeared as agent for the objectors. Mr Salmon appeared in person and represented himself. An inspection was conducted on 8th March 2000 in the presence of the applicant and the objector D Armstrong and Mr Houen. The application areas adjoin each other and for the convenience of the parties, all applications were heard

together. The objections relate to each application. Prior to the hearing, ground of objection No 5 was formally withdrawn in writing.

(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). The applicant has not proposed to construct any infrastructure although he has that right under section 234(1) of the MRA.

I accept the applicant's advice and I am satisfied on the information given that the purpose for which the lease is sought is a purpose that is permitted under the MRA, provided certain criteria are met. The application area is to the north of an area generally recognised as gem bearing and on which mining operations are being carried out by others on existing leases. The applicant is required to satisfy the Court that mineralisation exists. This relates to Ground 1 of the objection. The objector relies on the lack of any sampling or testing to prove mineralisation. The objector states in evidence that he has not seen any signs of testing or sampling. The objector tendered a report into drilling carried out by others to the north of the subject area but located on his property. The effect of this report is that the holders due to the poor results relinquished those exploration tenures. The economic viability of the project is a matter for the applicant's commercial assessment, but considering the evidence tendered, I am not convinced that there is sufficient evidence of mineralisation to warrant the grant of a lease.

The applicant is hampered in providing this evidence as the area involved is part of Restricted Area 1 (Part 2 – *Mineral Resources Regulations 1990*). No exploration Permits or Mineral Development Licences can issue over Restricted Area 1. These four applications fall within that Restricted Area. The applicant has been unable to conduct any extensive exploration ie drilling and consteaming.

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

From documentation lodged with the application, I am satisfied the applicant has sufficient resources to progress development to an acceptable level. The applicant has been involved in the mining of sapphires for about 30 years, and has the experience and equipment necessary to complete the project.

(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 an appropriate size and shape. There is no evidence of mineralisation, or other purposes, advanced to substantiate size and shape.

Apart from those factors, 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 each lease applied for is 5 years. I am satisfied that the term sought is appropriate and will allow for mining and rehabilitation to be completed. The applicant has the option of renewal under s.286 of the Act, or surrender at an earlier date under section 309.

(f) Has the applicant the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease?

From the information supplied, I am satisfied the applicant has the necessary financial and technical capabilities or access to those resources to carry out the mining operation. Mining for sapphire is basically an extractive industry utilising shallow open cuts and does not require extensive plant, processing equipment, or large injections of capital. The applicant would have the essential plant and equipment available. The applicant has mined sapphires for a number of years and in my opinion has the experience necessary to complete the mining operation. [*Carr –v- Simnovec* (1980) 26 SASR 263 at 268, and *Pacminex –v- Aust. Nephrite Jade Mines* (1974) 7 SASR 401 at 415].

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

There is material before me to suggest that the past performance of the applicant has been unsatisfactory as far as the opinion of the landowner is concerned. The Court did not inspect areas of past rehabilitation completed by the applicant, and while it may not have impressed the objector, there is no evidence to show that remedial action was or is required by the Registrar. 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?

The applicant was the holder of the relevant pre-requisite title under s.232 of the *MRA* at the time of marking out. It does not appear that the holder of or applicant for any other exploration permit or mineral development licence has been affected. However, being part of Restricted Area 1, EPM's and M.D.L's will not be issued.

(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 or management facilities. The land is pulled scrub and has a strong buffel grass cover. The landowner regards the whole property as supporting a fattening program and is concerned that the mining operation on these leases will destroy pasture and lead to the introduction of weeds, particularly parthenium. Rainfall is generally not high, but recent falls of rain have ensured a good cover of fodder, particularly buffel grass.

Information has been supplied as to the applicant's site management proposals. The objector disputes that anything can be certain until mineralisation is proved and the source of water or location of access roads is known. The evidence leaves me with reason to believe that the proposed mining operations do not conform with sound land use management principles until more specific details are known.

(j) Will there be adverse environmental effects caused by the proposed operation, and if so, the extent thereof?

An Environmental Management Overview Strategy (EMOS) has been lodged with the Registrar and accepted under delegation, subject to any recommendation of this Court and any further requirement of the Minister.

The proposed mining activity is in an isolated area away from human habitation. The mining will not have any deleterious effect on any river or creek system. Chemicals will not be used in the mining process. Due to low rainfall and the method of mining, erosion will not be a problem provided the usual control measures are put in place. There are no other environmental factors of significance that may be adversely effected by the operation. If the leases are granted, the applicant will be required to backfill where possible as mining progresses, keeping out-standing rehabilitation to a bare minimum where possible.

By section 35 of the *Mineral Resources Regulations 1990*, the applicant is required to maintain the lease and access free of *parthenium* weed and any other weed declared under the *Rural Lands Protection Act 1985*.

(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 areas. It appears there are no sites of historical interest or aboriginal significance within the area. If any such sites are identified, the EMOS can be amended to put forward specific site protection or site avoidance strategies.

(l) Has any good reason been shown for a refusal to grant the mining lease?

The economic viability of this project is a commercial decision of the applicant. When all other aspects of the application and the matters referred to in section 269 are taken into account, I am not satisfied that the applicant has demonstrated the presence of mineralisation sufficient to warrant the granting of a lease. While R.A. 1 remains in place, this is likely to be the case in the future.

In my view, this lack of evidence of mineralisation is good reason 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 grazing and pasture cropping. In my view, there appears to be 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 V and VI, and post mining will return in all probability to Class VII, leaving the landowner with downgraded pasture on a property he particularly purchased for its pasture and fattening capabilities. The proposed mining operation appears, on the evidence, an inappropriate land use, taking into account the current and prospective uses of the land and the lack of information in relation to a mining programme.

GENERAL COMMENTS

It is noted that Ground 5 of the objection was withdrawn prior to the hearing.

I am satisfied that Ground of objection No 1 has been made out in respect of all the applications, and that in itself is sufficient to recommend against all the applications.

In respect of MLA 70204, (Ground of objection No. 2) no consent in respect of Category B land has been given. This is not insurmountable, and the lease could be re-pegged to exclude the category B land. This would cause some disruption to the management of the property, and this disruption would have to be reflected in an award of compensation.

Grounds of objection Nos. 3 and 4 relate to the mining program, environmental management program and the “project” details. Although these matters could be re-butted and rectified with further detail, it is not necessary to consider those grounds any further in view of the proposed recommendation.

RECOMMENDATION:

Upon consideration of all the matters set forth in s.269 (4) of the *Mineral Resources Act 1989*, I recommend that mining lease applications 70204, 70205, 70206 and 70207 be rejected on the following grounds:

- 1) Evidence of mineralisation required under section 269(4)(b) is lacking, and therefore the grant of a mining lease is not warranted at this time.**

Dated at BRISBANE this 7th day of April 2000.

F.W. WINDRIDGE
MINING WARDEN

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