

**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 80051) IN THE ROCKHAMPTON
DISTRICT**

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

APPLICANTS: **AUSTRALIAN JADE EXPLORATION PTY LTD
99.5%
LAGOON HILL NICKEL N L 0.5%**

CATCHWORDS: **MINING AND ASSOCIATED INFRASTRUCTURE –
NO PREJUDICE BY LATE LODGMENT –
SUBSTANTIAL COMPLIANCE – STATE FOREST
CONDITIONS NOT NECESSARY OR RELEVANT**

Mineral Resources Act 1989 s. 269, s. 252

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 CHRYSOPRASE, and associated infrastructure namely WATER SUPPLY, WATER SUMP, SCREENING, WORKSHOP, WAREHOUSE, FUEL STORAGE, SITE OFFICE, FIRST AID FACILITY, CRIB ROOM, WASH ROOM, TOILET FACILITIES, POWER SUPPLY, and OVERBURDEN STOCKPILE. The application is for surface area of 970 hectares and is situated on LOT 2 on CP L1334, County of LIEBIG, Parish of RAMILLIES, and part of LOT 65 on Crown Plan FTY 1503, County of LIEBIG, Parish of EUGENE, being Res 22460 (State Forest). Access is through Lot 2, Lot 6, and Lot A. The lease is located about 15 kilometres south of Marlborough, and if granted, is to be known as "Ajex".

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 reservation in section 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 30 September 1997. A certificate of application was issued on 11 September 1998 (s.252 (1)) setting the last date for receipt of objections as 23 October 1998 (s.252(2)).

Two objections were lodged pursuant to s.260(1) of the Act. Both objections have been withdrawn. However, the Department of Natural Resources indicates its consent in relation to the Reserve is conditional. Those conditions will be examined later. 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 each of the Applicants 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 located on Lot 2 and part of Lot 65. The part of Lot 65 that is within the application area is a reserve as defined in section 5. I find that the application is therefore 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. That consent has been given, subject to conditions. 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, at least one of the applicants was the holder of EPM 11195 (s.232(1)).

A declaration of posting was lodged on 13 November 1998 (s.252(9)), and service of documents was in accordance with s.399. Lodgement of the Certificate of Posting was outside the prescribed limit of seven days (s.252(9)). There is no indication of the Registrar exercising any discretion to allow a longer time for lodgement.

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 complied with or substantially complied with (s.392). It appears that no person has been disadvantaged by late lodgement under s.252, and I find substantial compliance in respect of this point.

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 the trustee has been given subject to conditions. I therefore dispense with the hearing under the provisions of s.270(1) of the Act.

An inspection was carried out on 17 February 1999.

(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 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 application area is within an area that has produced chrysoprase in the past and is located within a zone of nickel laterite deposits. The area has been previously explored and drilled by BHP and those results are available. Some costeaning has been carried out. The applicants are required to satisfy the Court that mineralisation exists, and I am so satisfied.

(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 propose to use contract miners for the mining operation, and will utilise finance from their own resources or a public issue. Lagoon Hill Nickel N L have a very minor interest and therefore Australian Jade Exploration Pty Ltd will be regarded as the effective applicant.

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

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 and therefore the cost and delay of a survey would appear to be not warranted. Parts of the boundary of this lease abut other leases in the area, but there is no intention to encroach.

(e) Is the term sought appropriate?

The term of lease applied for is 25 years. I am satisfied that the term sought is appropriate and will allow for mining and rehabilitation to be completed. Due to the nature of the market, long term leases are the "norm" for the mining and disposal of chryoprase. 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?

From the information supplied, I am satisfied the applicants has the necessary financial and technical capabilities or access to those resources to carry out the mining operation. The removal of the chrysoprase will be basically an extractive industry utilising shallow open cuts and does not require extensive plant, processing equipment, or large injections of capital, although some machinery and capital is necessary in the start up phase. Part B of the questionnaire gives details of the applicants' financial resources, and indicates that contractors will be used on a joint venture basis for mining of the chryoprase. Members of the applicant company have experience in mining and associated fields as detailed in their application. In my opinion at least some of the directors 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 applicants 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 all machinery is operated in a safe and competent manner by licensed persons. Until the applicants conduct some mining and complete some rehabilitation works, EMOS discounts should be withheld.

(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 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 although the landowner indicates that he does not desire to have cattle in the area, 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 “weathered ultrabasic rock” with no pasture grasses. The inspection indicates that the land is relatively steep and hilly and not suitable for any other use. Land appears to be class VII, and will be returned to class VII after rehabilitation. 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 Applicants’ 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.

(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. It is not proposed to establish any living quarters on the application area, although this was part of the original proposal. Fuel storage areas will have to be bunded to prevent any spillage leaving the area.

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. A proposal to

remove placer chrysoprase from the creeks has been deleted and there will be no interference with the stream beds. 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 appropriate controls are in place. There are no other environmental factors of significance which may be adversely affected by the operation that have not been addressed in the EMOS.

(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.

(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 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 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 State Forest, 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 landowners for any conflict or loss over land use (s.281). I note that compensation agreements have not been filed with the Registrar in accordance with s.279 of the Act, although I am informed that compensation agreements have been signed.

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 damages, and if necessary, injunctive relief under the powers contained in s.363(6).

The applicants have no history of mining in Queensland, and therefore EMOS discounts should be withheld until the applicants have provided evidence that the mining plan and rehabilitation proposals can be achieved.

The "description of project" document indicates that any material rich in nickel will be stockpiled and treated by another company for the recovery of nickel. If nickel ore is recovered as part of the mining process, the applicants will require the consent of the Minister under s.298 to mine such ore.

The "description of project" document also discloses that other activities will be conducted on the lease. These activities are "other purposes" as referred to in s. 234(1)(b) and should be disclosed in the Certificate of Application. Due to the nature of the application, the remote locality of the application and the fact that the landowners involved have withdrawn their objections after compensation was settled, I am not satisfied that any other person has suffered any prejudice, and find substantial compliance in this instance.

The applicants are to appoint a registered mine manager under the *Mines Regulation Act 1964* (section 27) and that mine manager is to maintain a mine record book.

Of the ten conditions required by the Forest Officer in respect of that part of Lot 65 that is within the application area, I would offer the following comments:

Items 1,2,3,7 and 8. Not suitable as lease conditions. Can be incorporated into the compensation agreement.

Item 4. Not necessary. The registered mine manager is responsible for all operations on the lease area and would automatically be the "delegated officer".

Item 5. Not necessary in view of recommendation (2).

Item 6. Not necessary. *MRA* requires the removal of all plant, equipment and structures when mining and rehabilitation is completed. Security deposit is held to ensure compliance.

Item 9. This condition of doubtful legal authority or effect. Not appropriate to be considered as a lease condition.

Item 10. No evidence to show this is necessary, bearing in mind the delay and cost of such a proposal. The landowner should be aware of the existence of any significant cultural heritage, or can conduct his own survey. The EMOS can then be amended to cater for site protection or avoidance strategies.

From my observations, and from the material that has been before the Court or will be placed before the Court in the near future, it is apparent that the level of activity in the Marlborough area will increase significantly in the near future. Increased surveillance by Departmental officers would be advisable in order to detect problems and breaches before they become major events.

RECOMMENDATION:

Upon consideration of all the matters set forth in s.269(4) of the Act, I recommend:

(1) That the mining lease be granted over the whole of the application area for a term of 25 YEARS for the purpose of mining for CHRYOPRASE, and for associated infrastructure namely WATER SUPPLY, WATER SUMP, SCREENING, WORKSHOP, WAREHOUSE, FUEL STORAGE, SITE OFFICE, FIRST AID FACILITY, CRIB ROOM, WASH ROOM, TOILET FACILITIES, POWER SUPPLY and OVERBURDEN STOCKPILE. (s.270(2)).

(2) That the applicant miner be not permitted to erect or place any infrastructure on that part of the application area that is within State Forest, mining, rehabilitation and access/haul roads being the only activity permitted in that area.

Dated at BRISBANE this 9th day of March 1999.

F.W. WINDRIDGE
MINING WARDEN

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