

**IN THE WARDEN'S COURT OF QUEENSLAND  
HELD AT BRISBANE**

**IN THE MATTER OF:** (1) APPLICATION UNDER SECTION 406 OF THE MINERAL RESOURCES ACT 1989 FOR REVIEW OF THE REGISTRARS DECISION TO CONDUCT A CONFERENCE UNDER SECTION 254 OF THE SAID ACT:

(2) APPLICATION TO STRIKE OUT GROUNDS OF OBJECTION

**APPLICANT MINER:** Mr P Ambrose instructed by Corrs Chambers & Westgarth, Solicitors of Brisbane, for QMC REFMAG PTY LTD, QMC (KUNWARARA) PTY LIMITED, and QUEENSLAND METALS CORPORATION.

**RESPONDENT:** Mr P Brown as agent for Mr B ANGEL, landowner

**CATCHWORDS:** MINING – MINING LEASE – REVIEW – OBJECTION – CONFERENCE – NOTICE OF OBJECTION – VALIDITY – OUT OF TIME

*Mineral Resources Act 1989 ss 253, 254, 260, 376, 406*

**RULING:**

The applicant miner seeks a review of the decision of the Registrar to conduct a conference under s. 254 of the *Mineral Resources Act 1989*, and further seeks an order striking out the objections lodged by the respondent landowner.

These applications arise out of Mining Lease Application 80067 lodged by the applicants at the Registrar's Office at Rockhampton on 4 August 1998.

The applicant miner currently has two leases in the Kunwarara area, shown on Exhibit 1 as KG1 and KG2. The applicant seeks another lease known as KG3 which is close to KG1. Part of the boundary of the new application area (KG3) runs parallel to part of the boundary of KG1 (a current lease), but the respective areas are separated by a corridor some 50 metres wide. The 50 metre corridor was created by agreement between the parties in respect of exploration activities conducted by the applicant miner. Access to KG3 is by a roadway from KG1.

While the circumstances surrounding the application for review and the application to strike out are closely linked, the two matters have been dealt with separately during submissions.

Section 260 of the *Mineral Resources Act 1989* states:

“Objection to application for grant of mining lease -

260.(1) An entity may on or before -

- (a) the last date fixed for the receipt of objections pursuant to section 252; or
- (b) if the Minister, pursuant to section 261, directs a study to be undertaken, the last date fixed for the receipt of objections pursuant to that section;

whichever is the later, lodge with the mining registrar an objection in writing in the approved form.

- (2) An owner of land who attends a conference with the applicant for the grant of a mining lease may lodge an objection on or before the expiration of 7 days after the conclusion of that conference if the applicant for the grant of a mining lease fails to attend the conference after the day upon which the conference was convened, notwithstanding that the period for objection prescribed by subsection (1) has expired.
- (3) An objection referred to in subsection (1) or (2) shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.
- (4) Each objector to an application for the grant of a mining lease shall serve upon the applicant on or before the last date that the objector may lodge an objection to that application a copy of the objection lodged by the objector.

It is necessary to set out part of s.254.

“Mining registrar may call conference in some cases -

254.(1) This section applies if -

- (a) within 7 days after receiving a signed certificate of application for a mining lease (or a longer period allowed by the mining registrar), an owner of land affected by the application gives the mining registrar a written request for a conference, stating the things the owner wants to discuss about the application; or
- (b) for another reason, the mining registrar considers it desirable to hold a conference about a mining lease or an application for a mining lease.

(Subsection 2 to 6 follow, but are irrelevant here).

There are two situations where a conference might be called. One is where an owner of land affected by the application gives a written request for a conference stating the things the owner wants to discuss about the application.

There are several pre-conditions which must be met to bring this conference into effect. They are: the request must be from an owner of land affected by the application; it must be in writing; it must state the things the owner wants to discuss about the application; and it must be made within 7 days after receiving the signed certificate of application (or such longer period allowed by the mining registrar).

It is also mandatory for the registrar to do certain things. The registrar must call the conference by giving written notice. The conference is only between the owner of land affected and the applicant. The notice must state where and when the conference is to be held. The notice must state what is to be discussed at the conference. The conference must be held before the last objection day ends. If an objection has been lodged, the conference must be held before the date fixed for the hearing of the application for the grant of the mining lease.

The second power to convene a conference is under s.254 (12) (b). The mining registrar may call a conference about a mining lease (ie one already granted) or about an application for a mining lease. The exercise of this power (under (b)) is discretionary, but if exercised, notice is to be given to the applicant, to any affected landowner and any other person considered by the registrar to have an interest. The notice must state where and when the conference is to be held, and must state what is to be discussed at the conference. If the conference is about an application, the conference must be held before the last objection day ends.

It is therefore mandatory for the landowner and the registrar to comply with the provisions of s.254 where the conference is one requested under paragraph (a) by the landowner. Paragraph (b) is not applicable in this instance because the registrar did not exercise any independent discretion to call the conference although that was always an option particularly if a conference under paragraph (a) was not requested.

From the circumstances surrounding this application, it appears that the landowner has relied on his rights under s.260 (2) to file an objection after the conference. A reading of s.260 (5) on its own without reference to s.245 might induce one to thinking that the right to lodge an objection within seven days after the conference was clear. However, the only conclusion is that it must be a conference called pursuant to s.254 (1)(a) because of the imposition of time limits, and references to the conference. Only s.254 gives the right to call the conference in respect of mining leases or mining lease application.

I accept the occurrence of certain things on certain dates as sworn to by Roger Alan North in his affidavit dated 10 October 1998 and appended to the affidavit as "RAN2", in so far as they are relevant to this ruling.

After examination of the material filed and taking into consideration the submissions of the parties, I am satisfied that the request for a conference was out of time, not initially in writing and did not state "the things that the owner wants to discuss about the application". There was no request for an extension of time and the Registrar was left in the position where any extension would have been difficult as the date of service was not known until the certificate of posting and advertising was filed, and that was not until 11 September 1998, 2 days after written notice was given to the applicant.

I am satisfied that the requirements of s.254 were not met, and therefore any alleged meeting or conference was not convened under the provisions of s.254. Therefore the right of the landowner to file an objection within 7 days does not exist as the pre-requisite actions have not taken place or been performed.

## **APPLICATION TO STRIKE OUT OBJECTIONS**

The applicant miner refers to the notice of objection lodged at the Registrar's Office at Rockhampton at 9.10 am on 30<sup>th</sup> September 1998 and seeks to have that objection struck out on a number of grounds.

The certificate of application issued on 11 August 1998 indicated that 8 September 1998 was the last date for the receipt of objections. The objector was relying on the rights conferred under s.260(2) and as indicated I consider the conference convened for 24 September 1998 was not a conference under s.254(1)(a) of the Act.

This Court has previously ruled about the validity of notices of objections (see MLA 90045 Gulf Minerals and Metals Limited; MLA 50088 Austex Mining NL and Harrison and Genery 6 November 1995; Tarack Pty Ltd v Initiating Explosives Systems Pty Ltd – 20 October 1995; and MLA 80013 Shannon & Ors v Gladstone Area Water Board – 8 May 1992.

In this instance the landowner has failed to lodge an objection under s.260(1) and his reliance on his rights under s.260(2) was therefore fatal because the requirements of s.254(1)(a) were not met.

The applicant raises a number of issues about the content of the notice of objection, particularly the lack of detail as to grounds, the facts and circumstances supporting those grounds, and other objections which appear to be more directly concerned with compensation issues. Certainly the objection may have been drafted more carefully, although in general terms it does point to the issues of concern of the landowner. It may be that the drafting and content is more a problem for the objector than the applicant particularly if the issue of costs are raised at a later date, ie time wasted on non-objection issues.

In view of the orders I intend to make, it is not necessary to consider the matter any further. On the basis that the objection does not comply with s.260 in that it is out of time because of a mis-interpretation of subsection (2) of s.260 in that the landowner has not had the benefit of a conference properly called and convened within the meaning of s.254(1)(a), the objections are struck out.

In making the orders, I am not implying any wrongful action by the Registrar. The spirit and intent of s.254 is that issues surrounding applications and leases be discussed and resolved in a timely and non-legal atmosphere, saving cost and alleviating concerns as much as possible. Of late, the provisions of s.254 have been used more frequently and the Court endorses increased use of s.254 because of the saving in time and costs, particularly to the Court. In this instance I consider the Registrar has made a bona fide attempt to bring the parties together in order to address the issues. A simple amendment to s.260 (2) would alert any landowner to the risk of relying on subsection (2) without the protection of an objection filed in accordance with s.260.

I am aware that the applicant miner has, notwithstanding his stance in relation to the objection, offered to meet with the landowner and hold meaningful discussions about

the landowner's concerns. The respondent landowner through his agent confirms that he has had a good working relationship with the applicant miner in the past and his attempts to resolve some issues relating to the new application by way of a conference were meant to achieve an effective result at a minimal cost to the parties. It is obvious he is now in a position he sought to avoid. The difference is that the landowner seeks to negotiate from the position of being a bona fide objector and the miner is willing to negotiate with the landowner but only with the status of an owner of land affected by the application.

From what I have read and heard about the issues in dispute, putting aside any matter of pure compensation, I am of the opinion that a speedy and effective resolution can be negotiated, given the amount of goodwill held by the parties who have had a good working relationship for some time.

Section 253 of the *Mineral Resources Act* gives the Mining Registrar power to re-issue certificate of application in certain limited circumstances. Section 363(4) states:

“The jurisdiction of a Warden's Court includes jurisdiction to take cognisance of and determine all claims and interests arising in any proceeding before it, both it, both legal and equitable, and in the exercise of its jurisdiction a Warden's Court shall have power to grant equitable remedies”.

There is also power under s.376(1) –

“Generally make such orders, determinations or assessments and give such judgements;

as it thinks fit for the purpose of effectively disposing of any matter before it according to the merits of the case.”

I consider that in all the circumstances the rights of the landowner will be protected, and the delay to the miner will be minimal if the application is re-advertised.

I therefore order that the application be re-advertised by the Registrar as soon as reasonably possible, the cost to be borne by the Registrar, but all other requirements to be fulfilled by the respective parties as required under s.252 of the Act. This does put the parties to some trouble, but I consider the interests of both parties will be served by taking this course of action.

This order arises out of a particular set of circumstances and should not be taken as an indication that re-advertisement will be ordered by the Court each time the requirements of the Act are not met by any party.

No submissions were taken in respect of costs, and it would be appropriate to reserve the question of costs to a later date given that the application proper will come before the Court in due course, and the parties can then make any application at that time.

It is suggested that the Department of Mines and Energy re-consider the wording of s.254 of the *Mineral Resources Act*. It is apparent that, in most cases, the Registrar would have difficulty determining when the seven day limit expires if the Registrar

has no information available as to service of the certificate of application. However, the thrust and intent of s.254 should be maintained. Further, in s.260 (2), the words "pursuant to s.254 (1)(a)" should be inserted after the word "conference" where it first appears. This will clearly indicate that such a conference is one related to the provisions of s.254 (1)(a). In the nine years since proclamation of the Act, Registrars have gained some practical experience with s.254 and their opinion as to any meaningful amendments should be canvassed. In particular, the time limits for conferences in respect of Level 2 (low impact projects) might be extended to 14 days, and for Level 1 (high impact projects), time limits may be extended to 28 days if a full EIS has not been requested by the Minister. This will give landowners in remote areas more opportunity to take legal and technical advice on any matters of concern.

Dated at Brisbane this 9<sup>th</sup> day of November 1998.

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