

LAND COURT OF QUEENSLAND

CITATION: *Re Volga Elderberry Pty Ltd* [2010] QLC 0100

PARTIES: **In the matter of Application for Mining Lease No 90192 by Volga Elderberry Pty Ltd**

FILE NO: MRA123-10

PROCEEDING: Application for mining lease

DELIVERED ON: 2 July 2010

DELIVERED AT: Brisbane

MEMBER: Mr WA Isdale

ORDERS: **1. Hearing dispensed with.**
2. I recommend to the Honourable the Minister for Natural Resources, Mines and Energy and Minister for Trade that Mining Lease No. 90192 be granted over the whole of the application area for a term of 10 years.

CATCHWORDS: MINING – MINING LEASE – RECOMMENDATION
Mineral Resources Act 1989 ss 245, 269(4)

APPEARANCES: Not applicable – Heard on the Papers

[1] This is an application made under s.245 of the *Mineral Resources Act 1989* (the Act) by Volga Elderberry Pty Ltd for a mining lease over 21.95 ha of land located east of Cloncurry. The mining lease is sought for the purpose of gold mining.

[2] The application was lodged in the office of the Mining Registrar at Mt Isa on 21 August 2009.

[3] Public Notice of the application was given pursuant to s.252B of the Act and s.211 of the *Environmental Protection Act 1994*.

[4] At the conclusion of the objection period on 6 May 2010 the Mining Registrar had not received any objections.

Land Court may dispense with hearing

[5] Section 270 of the Act provides the procedure to be followed where no objections are lodged. Although s.270 was omitted from the Act by s.51 of *Act No. 17 of 2010*

which commenced on 21 April 2010, s.773 of the Act preserves its operations in respect of this application, which was lodged prior to 21 April 2010.

[6] Section 270 allows the Court to exercise a discretion to dispense with a hearing if the provisions of Part 7 of the Act, other than those which require a hearing, have been complied with and where no objection has been lodged. The material provided by the Applicant to the Mining Registrar and sent by the Registrar to the Court is sufficient to allow the Court to take into account and consider all matters set out in s.269(4) of the Act. That material also satisfies the Court that all relevant provisions of Part 7 of the Act have been complied with in respect of the application. Certificate of Application for Mining Lease No. 90192 was issued on 16 March 2010 and Certificate of Public Notice for Mining Lease No. 90192 was issued on 22 March 2010. The statutory declaration of Eden Margaret Hodson dated 7 May 2010 is uncontradicted evidence that a copy of the Certificate of Public Notice was posted on the datum post on the land on 24 March 2010 and remained continuously so posted until the date for close of objections. It also provides evidence that the required service on the landowners and the local authority took place as did publishing of a suitable notice in the North West Star newspaper. The Additional Information and Statutory Declaration dated 7 May 2010 and filed on behalf of the Applicant contains, at paragraph 8, a request that the Court determine the application without an oral hearing.

[7] Being satisfied as required by s.270 of the Act, I exercise the discretion to dispense with a hearing.

The criteria in section 269(4) of the Act

[8] In considering those criteria I have considered and taken into account all of the material lodged with the Mining Registrar and provided by the Registrar to this Court.

Section 269(4)(a) – Have the provisions of the Act been complied with?

[9] On 16 March 2010 the Mining Registrar at Mt Isa issued a Certificate of Application for Mining Lease No. 90192 under s.252 of the Act. On 22 March 2010 the Registrar issued a Certificate of Public Notice for Mining Lease No. 90192 under s.252A of the Act. The statutory declaration of Eden Margaret Hodson dated 7 May 2010 provides evidence of the matters referred to in [6] above. The Registrar's certificate may only be issued if there has been compliance with the process set out in the Act. There is no evidence to the contrary and I am accordingly satisfied that the provisions of the Act have been complied with.

Section 269(4)(b) – Is the area of land applied for mineralised or are the other purposes for which the lease is sought appropriate?

[10] The Additional Information and Statutory Declaration for the Land Court dated 7 May 2010 and declared by Eden Margaret Hodson states, in paragraph 3 that on the basis of studies published in the Lorena Gold report for ML 7147 the proposed mining lease area is mineralised. The Application for Mining Lease specifies the mineral being sought to be gold. I am therefore satisfied as required by s.269(4)(b).

Section 269(4)(c) – If the land applied for is mineralised, will there be an acceptable level of development and utilisation of the mineral resources within the area applied for?

[11] The Application states that the whole of the surface area is required for mining activities in conjunction with ML 7147. With no evidence to the contrary, I am satisfied that this will be an acceptable level of development and utilisation of the mineral resources in the area applied for.

Section 269(4)(d) – Is the land and the surface area of that land in respect of which the mining lease is sought of an appropriate size and shape in relation to the matters mentioned in paragraphs (b) and (c) and the type and location of the activities proposed to be carried out under the lease and their likely impact on the surface of the land?

[12] The plan provided with the Application shows that the proposed leased area is a regular shape which does not appear to provide any obvious difficulty to working for the proposed purposes. The size, 21.95 ha, also appears appropriate for the proposed purposes. I am satisfied in accordance with s.269(4)(d).

Section 269(4)(e) – Is the term sought appropriate?

[13] The Application is for a term of 10 years. It is stated that this compliments the resource. I accept this evidence from the Applicant and am therefore satisfied that the term sought is appropriate.

Section 269(4)(f) – Does the Applicant have the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease?

[14] The Additional Information and Statutory Declaration for the Land Court states that the Applicant claims successful operation of the Lorena Gold Mine on ML 7147. It is also declared that neither the Applicant company nor a director has ever had a show cause notice, conviction, penalty or a tenure cancelled under the Act or the *Mining Act 1968*. I am therefore satisfied as required by s.269(4)(f).

Section 269(4)(g) – Has the past performance of the Applicant been satisfactory?

[15] In view of the declaration referred to in [14] that there has been no show cause notice, conviction, penalty or cancellation of tenure as there set out, I am satisfied that the past performance of the Applicant has been satisfactory.

Section 269(4)(h) – Will any disadvantage result to the holders of existing exploration permits or mineral development licences or to existing Applicants for exploration permits or mineral development licences?

[16] There are existing tenements within the application area, namely EPM 18309 held by Pacific Consulting Services Pty Ltd and EPM 18307 held by the present applicant. The Additional Information and Statutory Declaration for the Land Court declares, in paragraph 5(c) that the proposed lease or operations will not affect the rights of holders of or applicants for any exploration permits or mineral development licences over the proposed mining lease area. I also note that there is no objection to the Application and accordingly am satisfied that there will not be any disadvantage.

Section 264(4)(i) – Do the operations to be carried on under the authority of the proposed Mining Lease conform with sound land use management?

[17] The current use of the land is cattle grazing. I am satisfied that the proposed operations conform with sound land use management when environmental obligations and rehabilitation requirements are taken into account.

Section 264(4)(j) – Will there be any adverse environmental impacts and, if so, the extent thereof?

[18] It would be expected that some adverse environmental impact would not be unlikely. I note that the Environmental Protection Agency has on 1 September 2009, provided a Notice of Decision which constitutes a draft Environmental Authority number MIC 200917909 relevant to ML 90192. This demonstrates that environmental considerations are in hand with the appropriate body. In view of this I am satisfied that adverse environmental impacts will be able to be maintained at the minimum level.

Section 269(4)(k) – Will the public right and interest be prejudiced?

[19] The “Additional Information” declaration referred to previously declares that the proposed lease will not affect any public infrastructure over or on the proposed lease area. I am therefore satisfied that the public right and interest will not be prejudiced.

Section 269(4)(l) – Has any good reason been shown for a refusal to grant the mining lease?

[20] There is no objection before the Court and there is nothing in the evidence which provides any good reason for refusal to grant the mining lease.

Section 269(4)(m) – Is the proposed mining operation an appropriate land use taking into consideration the current and prospective uses of the land?

[21] The current use is cattle grazing and there is no evidence of any prospective use of the land other than that after the conclusion of mining. As rehabilitation after mining will make the land once again fit for its present use I find that the proposed mining operation is an appropriate land use.

Native Title

[22] The application area is over land that may be subject to native title. Native title processes have not been finalised.

Recommendation

[23] Taking into account all the evidence before the Court and, in particular, the aspects to which specific reference has been made, I recommend to the Honourable the Minister for Natural Resources, Mines and Energy and Minister for Trade that the Mining Lease sought by the Applicant company be granted over the whole of the application area for the purposes and term sought by the Applicant.

**WA ISDALE
MEMBER OF THE LAND COURT**