

LAND COURT OF QUEENSLAND

CITATION: *Consolidated Tin Mines Ltd on behalf of Snow Peak Mining Pty Ltd & Anor v Dunn & Ors* [2017] QLC 18

PARTIES: **Consolidated Tin Mines Ltd on behalf of Snow Peak Mining Pty Ltd**
(applicant)

Snow Peak Mining Pty Ltd
(applicant)

v

Gary Dunn, Frances Claire Ford, Chester Gordon Tuxford
(respondents)

FILE NO/s: MRA121-15
EPA137-16

DIVISION: General Division

PROCEEDING: Hearing of applications for mining leases and objections;
Objections to application for environmental authority

DELIVERED ON: 7 April 2017

DELIVERED AT: Brisbane

HEARD ON: 28 July 2016

HEARD AT: Cairns

MEMBER: WL Cochrane

ORDER/S: **1. I recommend to the Honourable the Minister for Natural Resources and Mines that mining lease ML100001 be granted over the application area.**

2. I recommend to the administering authority for the *Environmental Protection Act 1994* that the Environmental Authority be issued in terms of the draft Environmental Authority issued on 15 March 2016 without amendment.

CATCHWORDS: MINING – MINING LEASE – RECOMMENDATIONS – OBJECTIONS

ENVIRONMENT – DRAFT ENVIRONMENTAL
AUTHORITY – OBJECTIONS

Environmental Protection Act 1994 s 188, 190, 191

Mineral Resources Act 1989 s 238, s 252, s 269, s 422

APPEARANCES: AM Laylee of Counsel (instructed by Piper Alderman) for
the applicant
S Barclay, Lawyer, Litigation Unit, Department of
Environment and Heritage Protection, for the statutory party
FC Ford for the first and second respondents in person
The third respondent in person

- [1] These decisions relate to an application made by Snow Peak Mining Pty Ltd for a mining lease over a pre-existing mining lease application which was in an existing EPML. The relevant application is ML100001.
- [2] The mining lease was intended to replace existing MLA20007 and abuts existing mining leases 4042, 4043, 4130 granted to Snow Peak Mining Pty Ltd.¹
- [3] The lease applied for was sought for a term of 15 years and identified cobalt ore, copper ore, cobalt ore, iron ore, lead ore, tin ore, tungsten / wolfram / scheelite, zinc ore, silver ore and gold as specific minerals sought to be mined.
- [4] The proposed permit area had an area of 215 ha and was located within the Tablelands Regional Council in far north Queensland.
- [5] The land affected by the proposed lease was described as:
- (a) Lot 72 on plan SP149859;
 - (b) Lot 99 on plan SP149859;
 - (c) Lot 1 on plan road reserve – main road – Parish of Harrison Road;
and
 - (d) Lot 99 on plan road reserve – main road – Parish of Harrison Road.
- [6] In correspondence to the Department of Natural Resources and Mines (DNRM) dated 21 October 2014 the applicant described its ambitions for the application in the following terms:²

“The mining lease is to replace MLA 20007 and abuts existing Snow Peak Mining Pty Ltd granted mining leases 4042, 4043 and 4130.

¹ Ex 1.

² Ibid.

The term applied for allows for targets identified under previously held companies to be explored and identified for processing of ore and feeding the existing processing plant in Mt Garnet.”

- [7] The applicant, in its formal application described the proposal in the following terms:

“The mining lease covers a [sic] ore body known as ‘Jessies’s Dream’. This ore body has been identified in many previous exploration annual reports and was priority target area of previously held company Kagara Ltd.

Due to the complications of the existing [sic] mining lease application and the area being a ‘window’ in the current exploration permit, there is no allowance under the Mineral Resources Act to conduct onground [sic] exploration within the MLA area. Therefore MLA 20007 is being abandoned and a new MLA is being applied for under this application. Upon grant of the mining lease a detailed exploration program will be conducted to confirm the size and shape of the resource. This is a critical component in the planning of the mining operations for the site. Once resource size and shape is confirmed, through exploration and feasibility [sic] studies a confirmed mine plan will be structured around the resource and any required infrastructure. Certain aspects of mine planning cant not be confirmed until such time as the exploration etc has been completed.

Planned exploration to be undertaken within this first year of grant of the MLA includes, detailed mapping along the trend of the Jessie’s Dream prospect and along strike from the Mt Garnet orebody; extending regional soil sampling over the bulk of the application area; design first-pass Reverse Circulation Percussion drilling programme to test Jessies’s Dream prospect; conduct an Induced Polarization survey along the Jessies’s Dream trend to help focus drill targeting, and consider extending survey over geochemically anomalous zones revealed by the regional soil sampling programme; re-appraise drilling, to test the down-plunge position of the Northern Shoot of the Mt Garnet orebody.”

- [8] At approximately the same time an application was also made for an environmental authority.
- [9] With respect to the 15 year term which was sought for the lease, correspondence included in the referral materials asserted that the 15 years “will be covered by exploration, feasibility studies and mine planning to be undertaken within the first 1-2 years, continuing into start-up infrastructure, open cut mining or construction of storage facilities to support existing mining operations.”³
- [10] From the material on the file it appears as though an application for a standard environmental authority was originally made but, by correspondence sent by email on 22 April 2015, the applicant advised the Mineral Assessment Hub within DNRM

³ Ex 1.

that they would be proceeding with a Site Specific Amendment (with the support of the Department of Environment and Heritage Protection (EHP)).

- [11] An objection to the mining lease application signed by all three respondents was filed by the respondent Gary Dunn. In the body of that objection he identified the following grounds:

- “1. Air pollution... noise pollution
2. Water pollution and erosion
3. Disturbance/destruction of native flora and fauna
4. In the prevailing semi-arid conditions, where is the water necessary for these mining activity [sic] sourced and is it sustainable?
5. No details of upgrades to roads/other infrastructure needed resultant from increased use by mining and machinery/trucks
6. No guarantee of environmental restoration/regeneration or payment of debts incurred
7. MLAs are being granted ‘by the dozens’ all over this area dividing up the land and making it unsuitable for subdivision as ‘settling’ areas. This has been happening for years yet still there is not a viable industry anywhere in the district. Mining is obviously not the intended use of these mining leases
8. The wherewithal is not adequately explained.”

- [12] In the section of the approved form for making an objection which asked an objector to articulate the “facts and circumstances relied on in support of the grounds of the objection”, Mr Dunn wrote:

“Scientific research validate [sic] environmental/health concerns from inhaling/ingesting contaminated dust resultant from mining.

The mining companies may produce alturnate [sic] reports that downplay these dangers (or the ‘researcher’ wouldn’t get the job) but it does little to alter the resultant toxicity including in the effluent...which CANNOT be contained in holding ponds during the season deluges of ‘the wet’.

Snow Peak Mining has taken over the mining leases and processing plant from the defunct Kagarra... but not the debts. Jessies Dream was Kagarra’s dream but they couldn’t capitalize on it. Where is the wherewithal that reasonably infers that this company would be more successful and not just add to the destruction of the community that was Kagarra’s legacy?”

- [13] The articulation of the facts and circumstances relied upon in support of the grounds of objection included an indication to the reader to see attached pages for more detail upon which Mr Dunn based his objections.

- [14] Those pages state as follows:

- “1. ***Air pollution:*** Mining will create huge amounts of dust in an area prone to dust and just outside of the town (from open cut mining activities and from increased road use of the unsealed section of

- access road and narrow streets). There is also the noise from blasting.
2. ***Water pollution and erosion:*** Heavy metal contamination, not only of the town's water supply but all the way down to the reef, is inevitable. Direction of creek flow is towards the Herbert River. There is a need for Water flow studies of Herbert River catchment which services industry and domestic use, now and into the future.
 3. ***Wildlife Aspect:*** The value of retaining the environment, as it stands, far outweighs an extractive activity so close to a township, if only for the eco-tourism in view of the current trend of North Asia, South East Asia and the Indian Peninsular. There are also rare species of native fauna in this area as recorded in the Ian Sinclair DERM report.
 4. ***Water*** for present CTM mining activities is being stolen from private dams, under the guise of sole water rights. This mining company may have a different name but its Directors appear to be the same and no existing water bodies are identified/included in the proposal.
 5. ***The roads*** are not adequate for additional mining traffic. There is a need for traffic flow studies including taking into consideration future industrial and domestic usage in accordance with the 2025-2035 Planning Act.
 6. ***No guarantee of environmental restoration and regeneration:*** Mining purports to help the town prosper but it damages the physical and social infrastructure and give **nothing** in return. It destroys the whole community by inflating rents and thus ousting the long-time locals in favour of new administrative staff. (The miners are bussed in and out.) Then, when the company folds as it invariably must (in a time of deflated prices of what is, essentially, just a rework of an already failed venture) leaves a legacy of debt, ill health and a state of depopulation such that the very social fabric that was the community, no longer exists... Where then is any thought of rehabilitating the site as 'they' swear to do under the Environmental Code?
 7. ***Are all these applications for mining leases, in areas where there is no sustainable mining, in order to mine...*** or are they just a land grab in such a way as to bypass the conditions of Native title or upgrade of tenure or...? Consideration must be given for the retention of this area as a natural reserve as it is part and parcel of the catchment that flows into the Herbert River, the source of the Mt Garnet Township and surroundings area's water supply and whose run-off (and contaminants) feeds directly to the Great Barrier Reef.
 8. ***The wherewithal*** that guarantees the restoration and regeneration of the site progressively, maintains the integrity of the environment (land, air and water), insures the health of the community, (breathing, drinking and absorption through the skin) as well as the physical infrastructure of the road and future growth of the township and environs **has not been shown."**

[15] The mining lease area is located 5 km south of the township of Mount Garnet.

- [16] At the time that the application for a mining lease was made there was also an application for Environmental Authority (Standard) mining lease (EPSL02649814) but by later correspondence that application was withdrawn and an application was made in its place for an amendment of an existing environmental authority (EMPL00974913). That amendment was referred to in correspondence between the applicant and the statutory party as a “Site Specific Amendment”.
- [17] By email dated 30 April 2015 the statutory party advised the applicant’s agent that the amendment to the existing Environmental Authority would, in any event, need to be advertised because it was considered a major change to the existing Environmental Authority.
- [18] The Mining Registrar was advised by the applicant that the application for the mining lease and an environmental authority had been publicly notified, by way of advertisement which appeared in the Tablelands Advertiser on Friday 13 February 2015; a subsequent advertisement appeared in The Express on Wednesday 16 November 2015.
- [19] Thereafter things became a little confused because it was apparently identified that the applicant Snow Peak Mining, having applied for an Environmental Authority (Standard) needed, as identified above, to make an application for an amendment of the existing Environmental Authority.
- [20] Correspondence from the statutory party to this Court sought to clarify the true position.
- [21] Even then there was some confusion because the respondents in this matter – Ford, Dunn and Tuxford – had made an objection to the application for the Environmental Authority in its original form and thus were entitled to the benefit of s 163 of the *Environmental Protection Act 1994* (EP Act). That section provides that if an application is withdrawn but within one year after the withdrawal an applicant makes a later application, any properly made submission about the withdrawn application is taken to be a properly made submission about the later application.
- [22] In any event on 28 April 2016 the statutory party issued an assessment report in respect of the application for the amended Environmental Authority.

- [23] It is unnecessary for present purposes to descend into a detailed analysis of the findings of that assessment report, save to observe that assessment report recommended approval of the application for an amended environmental permit subject to a number of additional conditions.
- [24] It was that process of objections to the draft Environmental Authority EPML00974913 that led to the referral of the application to this Court.
- [25] As commented above, pursuant to s 163 of the EPA, the objections made in respect of the original application for an environmental permit are taken to be properly made submissions about the later application for an amended permit.
- [26] At the hearing of the matter in Cairns, Ms Frances Ford appeared on her own behalf and also represented Mr Gary Dunn. Mr Chester Tuxford appeared representing himself.
- [27] The applicant miner was represented by Ms AM Laylee of counsel and Mr S Barclay, a legal officer in the Department of Environment and Heritage Protection, appeared for the statutory party.
- [28] In the course of the opening I enquired of Mr Tuxford as to the utility of a letter received dated 3 June 2016 over his signature which said, “Mr Tuxford intends to call James Elrick from Cairns... Bob Mazlin, a botanist from Herberton... and Mike Nash from TERRAN concerning water quality” but in respect of which intimation no reports were received from any of those gentlemen.⁴
- [29] Mr Tuxford told the Court that he was not proposing to call any evidence from any of those people.⁵
- [30] Similarly Ms Ford on her own and Mr Dunn’s behalf told the Court that she was not calling any evidence either.⁶
- [31] Ms Ford had a short statement which she proposed to rely upon as her submissions.

⁴ T 1-21, lines 8-14.

⁵ T 1-23 lines 21-22.

⁶ T 1-23, line 24-31.

- [32] Ms Laylee had Ms Fiona Abbey, who was the guiding hand behind the applications for the mining lease and environmental permit, available for cross examination but neither Mr Tuxford or Ms Ford wished to cross examine Ms Abbey.
- [33] Similarly Mr Barclay, on behalf of the statutory party, had Mr Hamish Butler, the delegate who prepared the departmental reports and who had sworn an affidavit, available for cross examination but nobody required him for cross examination either.
- [34] It fell to Ms Ford to make submissions. She informed the Court that she relied upon her written submissions.
- [35] A careful reading of the written objections of each of the objectors demonstrates that their real concern focused on a scenario where the conditions of the mining lease and the conditions of any environmental permit might not be complied with.
- [36] They also relied upon unsubstantiated allegations about non-compliances on other leases and the dire consequences which they foresaw in the event of such failings on the subject lease.
- [37] Their written objections suggested they had little faith in enforcement agencies but they did not provide any evidence which demonstrated that such concerns were well-founded.
- [38] Mr Tuxford's submissions were along similar lines and he expressed concerns that public interests and the rights of citizens are trampled by large corporations.
- [39] Mr Tuxford's other genuinely held concern was that the mining process within Queensland is poorly administered and insufficient monitoring of damage to the environment occurs.
- [40] As with the concerns expressed by Ms Ford, Mr Tuxford did not produce any evidence which supported his concerns, which I accept were genuine and heartfelt.
- [41] Mr Tuxford really summarised his view when he told the Court, "because of this industry, the way it's been going on – and I know – since 1970, that – that we – we tried to stop it during the what's – in the 90s of all these statutes that have – well, the legalities that have been organised – that have been set up in such a way that we

have no transparency and – and access for the public to speak up on it on a regular basis.”⁷

[42] Consideration of the objections to the Environmental Authority is guided by s 188 of the EP Act⁸ provides as follows:

- “(1) The Land Court may, of its own initiative, make orders or directions it considers appropriate for a hearing for the objections decision (the *objections decision hearing*).
- (2) Without limiting subsection (1), the Land Court may make an order or direction that the objections decision hearing happen at the same time as a hearing under the Mineral Resources Act for the relevant mining tenure.”

[43] In the present case the objections to the mining lease and the objections to the application for an environmental authority are to be heard and determined together.

[44] The nature of the decision by this Court in respect of that objections hearing is set out in s 190⁹ (as in force at 1 January 2015, because in this case the draft Environmental Authority was issued in 2015).

[45] Section 190 of the EP Act identifies the nature of the decision which I am entitled to make in respect of the Environmental Authority, namely that:

- (a) the application be approved on the basis of the draft environmental authority for the application; or
- (b) the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or
- (c) the application be refused.

[46] Section 191 of the EP Act identifies the matters to be considered for the objections decision and specifically provides that I must consider the following:

- (a) the application;
- (b) any response given for an information request;
- (c) any standard conditions for the relevant activity or authority;
- (d) any draft environmental authority for the application;
- (e) any objection notice for the application;
- (f) any standard regulatory requirement;
- (g) the standard criteria;
- (h) the status of any application under the Mineral Resources Act for each relevant mining tenure.

⁷ T 1-36, lines 11-15.

⁸ See *Environmental Protection Act 1994* as in force 1 January 2015.

⁹ Ibid.

[47] With respect to my obligation in the context of the objection to the grant of the mining lease, s 268(3) of the Mineral Resources Act (MRA) provides:

- (3) The Land Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

[48] The Acts (MRA and EPA) do not contain any provisions which entitle me to go beyond the ambit of the relevant objections.

Section 269 of the MRA

[49] Section 269(4) of the MRA provides that the Land Court in making a recommendation to the Minister that an application for a mining lease shall be granted either in whole or in part, must take into account and consider a number of specified matters.

[50] Each of the matters required to be considered pursuant to s 269(4) of the MRA are discussed below.

[51] In considering each of those matters I have, of course, had regard to the material filed by the applicant and the material in which was filed by the objectors.

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

[52] The application for a mining lease was accepted by the Mineral Assessment Hub and in the material delivered to me by the Mineral Assessment Hub there was no suggestion that any of the requirements of the MRA had not been complied with and, indeed, the material was accompanied by a certificate of application for mining lease ML100001 together with a copy of certificate of public notice. The application by Snow Peak Mining Pty Ltd attracted objections from Frances Claire Ford, Gary Dunn and Chester Tuxford and accordingly I am satisfied that, in particular, the public notice requirements have all been complied with.

[53] In all of the circumstances I am satisfied that the EP Act's provisions have been complied with.

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

- [54] In their application for a mining lease Snow Peak Mining asserts that the area is mineralised and the Court is aware of a number of other mining leases which exist including ML20016, ML4042, ML4043 and ML20007. The area has, historically, been demonstrated to be mineralised and has been the subject of a number of exploration permits.
- [55] I am satisfied that the area of the lease is likely to be mineralised and thus that the requirements of s 269(4)(b) have been satisfied.

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

- [56] In their additional information provided pursuant to s 265 of the MRA Snow Peak Mining describe their proposal as seeking a 15 year term of lease which will be covered by exploration, feasibility studies and mine planning to be undertaken within the first 1-2 years, continuing into start up infrastructure, open cut mining or construction of storage facilities to support existing mining operations.¹⁰
- [57] Elsewhere in the application material there is reference to an existing and known ore body known as “Jessie’s Dream” which has previously been the target of mining operations.
- [58] I am satisfied that the evidence as a whole establishes that there will be an acceptable level of development, in accordance with that proposed, and there will be a utilisation of the mineral resources within the area applied for.

Section 269(4)(d) – Whether the land and the surface area of that land are of an appropriate size and shape?

- [59] As indicated in the referral material the area proposed for the mining lease is generally rectangular with one corner truncated and appears to be of an area of approximately 3.5 km². The application identifies it as having an area of 215 ha and accordingly I am satisfied that the land sought to be utilised and the surface area of that land are of appropriate size and shape.

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

¹⁰ Correspondence, Snow Peak Mining Pty Ltd to DNRM 21 October 2014.

- [60] Snow Peak Mining has applied for a term of 15 years which, in all of the circumstances, is not an unusually long period of time for a mining lease.
- [61] Further they explain, as I have commented above, that the term of 15 years is to permit both the determination of the size and shape of the existing ore body and the mine planning and construction work necessary to bring the mine to operation.
- [62] Accordingly, I am satisfied that the term of 15 years sought by the applicant is an appropriate term given the relatively small size of the proposed lease area.

Section 269(4)(f) – Whether the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease?

- [63] Within the assessment report carried out in respect of the application for an environmental permit the assessor wrote:

“Consolidated Tin Mines Ltd (CSD) operates the Mount Garnet mine site, located in the Mount Garnet Township, approximately 200 km south-west of Cairns in Far North Queensland. Key mine infrastructure include a tailings storage facility (TSF1), processing plant, mine pit and underground mines, administration buildings, workshops and sediment dam. Kagara Zinc Ltd (Kagara) were operators of the site until January 2013, when it was acquired by Snow Peak Mining Pty Ltd (SPM). All SPM assets are currently in the process of being acquired by CSD, and operational control of the site has been transferred to CSD. The Environmental Authority (EA) EPML00974913 for the Mount Garnet project (which incorporates the Mount Garnet, Surveyor and Balcooma mines) is still in the name of SPM until the acquisition of assets has been finalised.”

- [64] In reliance upon s 7 of the *Land Court Act* – which provides that this Court is not bound by rules of evidence and may inform itself in the way it considers appropriate – I have had regard to a number of press releases issued in respect of the listing on the Australian Stock Exchange of Consolidated Tin Mines and, in particular, an article, based on an Australian Stock Exchange release of 27 June 2016, which observed in part:¹¹

“The company has requested a trading halt to review its working capital needs.

Earlier it revealed a finalisation of Snow Peak Mining assets transfer and settlement was on the cards.

¹¹ Consolidated Tin Mines Ltd to reveal funding update (27 June 2016) Proactive Investors <http://www.proactiveinvestors.com.au/companies/news/152526/consolidated-tin-mines-ltd-to-reveal-funding-update--69447.html>.

The halt will remain in place until the opening of trade on Wednesday the 29th of June 2016, or earlier if an announcement is made to the market.

Consolidated Tin Mines entered into an agreement for \$US20 million in loan funding from Beijing Huacheng Dadi Investments upon settlement of Snow Peak Mining asset sale.”

[65] I further note that the ASX site shows that CSD continues to trade as at March 2017.

[66] On the evidence before me I am satisfied that Consolidated Tin Mines Ltd has the financial and technical capabilities to carry on mining operations under the proposed mining lease. Moreover there is a complete absence of any evidence to establish that they do not have the necessary financial and technical capability to carry on the proposed mining operations.

[67] I am satisfied that s 269(4)(f) of the MRA has been satisfied.

Section 269(4)(g) – Whether the past performance of the applicant has been satisfactory?

[68] The additional applicant information and statutory declaration for the Land Court dated 17 March 2015 points out that “Snow Peak Mining Pty Ltd is being operated and managed by Consolidated Tin Mines Ltd. Consolidated Tin Mines Ltd has been established in the Mount Garnet area since 2007. The assets of SPM were purchased by CSD on 12 January 2015 and will be transferred in due course.”¹²

[69] Elsewhere in that additional information the applicant confirms that they are unaware of any non-compliance damage, notices to show cause, cancellation of tenure, imposition of a penalty or conviction under the MRA.

[70] No evidence was placed before me which would lead to any finding that there has been any unsatisfactory past performance by Snow Peak Mining Pty Ltd or Consolidated Tin Mines Ltd.

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

¹² Ex 5.

[71] On the evidence before me there are no holders or applicants for any tenures who would be disadvantaged by the grant.

[72] In all of the circumstances I am satisfied that no disadvantage will result to the holders of any existing exploration permits or mineral development licences or any existing applicants for exploration permits or mineral development licences.

Section 269(4)(i) –Whether the operations to be carried on under the authority of the mining lease conform with sound land use management?

[73] The evidence before me in this and other cases involving lease in this area establish that the current use of the totality of the land area, apart from some existing mining leases, is for low intensity grazing and the land is otherwise capable of being used for mining purposes.

[74] The area alienated to the proposed new mining lease adds a relatively small area additional to existing mining lease areas in the vicinity and I am satisfied that utilisation of a mining lease to extract existing mineralisation conforms with sound land use management.

Section 269(4)(j) – Whether there will be any adverse environmental impacts, caused by those operations and if so, the extent thereof?

[75] I see no basis for finding that their activities are likely to result in any adverse environmental impact so long as they are compliant with the requirements of the *Code of Environmental Compliance for Mining Lease Projects*.

[76] In coming to this view I have taken into account any potential impact of the proposed mining activity on the owner and occupier of the adjoining land.

[77] In my view the objections raised by the three respondents are entirely speculative and, in particular, the objections fail to articulate any proper basis for concern about environmental impacts.

[78] Further, it should be noted that no evidence was sought to be called by those respondents to validate or support the grounds of objection raised by them.

[79] The work done in support of the amended Environmental Authority satisfies me that, so as long as the terms of the permit are complied with, no adverse

environmental impacts are likely to occur as a consequence of the granting this mining lease.

- [80] To the extent that it may be relevant I am satisfied that the *Code of Environmental Compliance for Mining Lease Projects* adequately sets out the miner's obligations and the EP Act contains sufficient provisions to enable enforcement proceedings to be taken.

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

- [81] There is nothing before me to suggest that there is any available evidence (let alone evidence adduced before me) to suggest that the public right and interest would be prejudiced by the proposed grant. Indeed, grant of the lease will permit the timely exploitation of existing mineralisation on the subject property.

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

- [82] In my view, having regard to all of the evidence referred to above and paying particular regard to the conclusions above and the fact that the lease relates to an area already being mined, I cannot identify any particular or good reason for not granting a lease over the whole of the application area.

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

- [83] On the basis of my findings in respect of the criteria in s 269(4)(i), (j), (k) and (l) as set out above, I have come to the view that the proposed activity is an appropriate land use taking into consideration the current and prospective uses of the land.
- [84] For the reasons which I have set out above, my decision in this matter is to recommend to the Honourable the Minister for Natural Resources and Mines that Mining Lease 100001 be granted over the application area.

Environmental Protection Act 1994 considerations

- [85] Part of the referral to this Court was consequential upon objections lodged by the respondents Ford, Dunn and Tuxford in respect of the proposed granting of an Amendment to an Environmental Authority.

- [86] The new tenure ML100001 is intended to go on to the existing site-specific Environmental Authority EPML00974913 because the proposed new tenure will form part of the existing mining activity and be operated as a single integrated project.
- [87] The application for amendment of the existing Environmental Authority was made on 1 September 2015 and was said to include a proposal to add a new mining tenement to an existing Environmental Authority. That amendment is referred to above.
- [88] The application for amendment to Environmental Authority EMPL00974913 was approved by the respondent department and was issued on 15 March 2016.
- [89] The first, second and third respondents as they were entitled to, objected to the draft Environmental Authority on a number of grounds including:
- (a) Surface water contamination;
 - (b) Ground water contamination;
 - (c) Flora and fauna impacts;
 - (d) Air pollution;
 - (e) Noise pollution;
 - (f) Transport concern;
 - (g) Problems with rehabilitation of the site.
- [90] Pursuant to Chapter 5 – Environmental Authorities and Environmentally Relevant Activities, Part 5, Subdivision 3, upon referral to this Court of an objection, the Court then has an obligation to conduct a hearing for the objections decision.¹³
- [91] At the hearing of this matter, as indicated above, the respondents found themselves in the position where they were not able to call any evidence in support of their objections.
- [92] No evidence of any failure to comply with any parts of the *Code of Environmental Compliance for Mining Leases* has been advanced by the respondents.
- [93] No attempt was made by the respondents to cross examine any of the witnesses who were available and consequently such evidence as was tendered to the Court, tendered in the form of agreed bundles of documents including the Form 6 and

¹³ See EP Act s 188(1).

Form 8 documentation which formed part of the referral to this Court, goes into evidence unchallenged on any proper evidentiary basis.

[94] The applicant lodged a compendious document entitled ‘Environmental Supporting Information July 2015’ which covered some nearly 70 pages including detailed tables and figures to clarify the contents of the report.

[95] The affidavit of Hamish Raymond Butler¹⁴ satisfies me that the analysis of the application carried out by the statutory party was appropriately comprehensive and that the views of the objectors, even absent any evidence being provided by them, were taken into account properly.

[96] To the extent that the matters objected to by them were relevant, I am also satisfied that the conditions which were attached to the draft Environmental Authority are adequate to deal with those concerns.

[97] This Court cannot approach the issue of an Environmental Authority with a mindset that suggests that a miner is going to operate in a way which breaches its obligations.

[98] There are numerous checks and balances including options for prosecution which support compliance with Environmental Authorities.

[99] The assessment by the statutory party is consistent with the recognition in s 3 of the EP Act that “the object of this Act is to protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (*ecologically sustainable development*).”

[100] That preamble recognises that some environmental harm inevitably flows from mining activity but sets out processes, including conditions attached to environmental permits, which permit mining to occur while at the same time seeking to protect the environment to the greatest extent possible.

[101] Accordingly, for the reasons set out above and in accordance with s 269 of the *Mineral Resources Act 1989* I recommend to the Honourable the Minister for Natural Resources and Mines that the application be granted over the application

¹⁴ Ex 10.

area to Consolidated Tin Mines Ltd. In accordance with s 190 of the *Environmental Protection Act 1994* I recommend to the administering authority for the *Environmental Protection Act 1994* that the Environmental Authority be granted in terms of the draft Environmental Authority issued on 15 March 2016 without amendment.

Orders

- 1. I recommend to the Honourable the Minister for Natural Resources and Mines that mining lease ML100001 be granted over the application area.**
- 2. I recommend to the administering authority for the *Environmental Protection Act 1994* that the Environmental Authority be issued in terms of the draft Environmental Authority issued on 15 March 2016 without amendment**

**WL COCHRANE
MEMBER OF THE LAND COURT**