

LAND COURT OF QUEENSLAND

CITATION: *Re Pickering* [2020] QLC 29

PARTIES: **Rai Pickering**
(applicant)

FILE NOS: MRA016-20 (MLA 100206)
MRA017-20 (MLA 100207)

DIVISION: General Division

PROCEEDING: Hearing of application for mining lease and objection

DELIVERED ON: 7 August 2020

DELIVERED AT: Brisbane

HEARD ON: 29 July 2020

HEARD AT: Brisbane

MEMBER: PG Stilgoe OAM

ORDER: **I recommend to the Minister for Natural Resources, Mines and Energy, as the Minister responsible for the *Mineral Resources Act 1989*, that MLA 100206 and MLA 100207 be granted.**

CATCHWORDS: ENERGY AND RESOURCES – MINERALS – COURTS OR TRIBUNALS EXERCISING JURISDICTION IN MINING MATTERS – QUEENSLAND – OTHER COURTS OR TRIBUNALS – where a small-scale gold miner applied for two mining leases near the Palmer River in far north Queensland – where the owner of the cattle station on which one of the leases was situated objected to the grant of both leases – where that sole objector was a non-active objector and did not appear at the hearing – whether to recommend the grant of the leases under s 269 of the *Mineral Resources Act 1989* – consideration of the factors in s 269(4) of the *Mineral Resources Act 1989* – where the Court recommended the grant of both leases

Mineral Resources Act 1989 s 269

APPEARANCES: R Pickering, the applicant (self-represented)

- [1] Small scale operators have been mining for gold on the Palmer River for over a century. Many of these operations have been conducted on Palmerville Station, a 134,000 ha grazing property about 100 km north west of Port Douglas.
- [2] Rai Pickering has applied for two mining leases to allow him to mine gold and silver ore. MLA 100207 is a 54 ha area located on Palmerville Station. MLA 100206 is a 30.5 ha area located on the Palmer Goldfield Resources Reserve, which is bordered by Palmerville to the east, west and south. Mr Pickering intends to use a 5-10 tonne excavator, processing three tonnes per hour for eight hours per day. He thinks that he will process a total of 60,000 tonnes. Both leases include space for a camp, an open cut mine and a mill.
- [3] Mr Pickering has also applied for an environmental authority (APP0038367).
- [4] Chelsea on the Park Pty Ltd recently bought Palmerville Station. Chelsea objected to Mr Pickering's leases but did not elect to be an active party in these proceedings and did not appear at the hearing.
- [5] Chelsea objects to Mr Pickering's proposed mining leases on the following grounds:¹
1. the areas are not sufficiently mineralised to justify the grant of the leases;
 2. the leases will not result in an acceptable level of development and utilisation of the mineral resources on the leases;
 3. the size and shape of the leases are not appropriate;
 4. Mr Pickering has not demonstrated that he has the necessary financial or technical resources to mine the leases;
 5. granting the leases will cause soil erosion and other negative impacts to the surface water and environmental values of the lease areas; and
 6. mining is not an appropriate use of the land taking into account the current and prospective uses of the lease areas. In its objection to MLA 100206,

¹ "Attachment 1 Grounds of Objection" in filed document 1 of MRA016-20; "Attachment 1 Grounds of Objection" in filed document 1 of MRA017-20.

Chelsea notes that the Palmer Goldfield Resources Reserve is currently a national park.²

- [6] Because of Chelsea's objections, I am required to consider whether to recommend the grant of the leases in light of s 269(4) of the *Mineral Resources Act 1989*. I am required to consider each of the matters in s 269(4) and I must decide, on balance, and in light of all factors, whether to recommend the grant in whole or in part. I may also recommend a lease is granted on conditions. It is appropriate first to deal with Chelsea's objections.

The areas are not sufficiently mineralised to justify the grant of the leases (s 269(4)(b))

- [7] There are three bases for dismissing this ground of objection. Firstly, the leases are located within an area with a strong and long history of gold mining.³ There is evidence of historic hard rock mines. Recent activity in the area, using modern machinery, has recovered quantities of ore and Mr Pickering's discussions with neighbouring leaseholders indicate that ore is being recovered through re-processing old tailings.⁴
- [8] Secondly, Mr Pickering has been prospecting and mining in the Palmer River area for six years.⁵ He has detected coarse to fine gold in parts of MLA 100207.⁶ He has found nuggets of up to 10 ounces.⁷
- [9] Thirdly, Mr Pickering commissioned a report from WT (Tom) Saunders, a consultant geologist.⁸ Mr Saunders reports that MLA 100206 is in an area favourable for both alluvial development and for sourcing gold from complex shears in shale and slate units.⁹ He reports that MLA 100207 has two types of mineralisation: nuggetty and fine gold from chert/basalt sequences and alluvial gold

² "Attachment 1 Grounds of Objection" in filed document 1 of MRA016-20 [6].

³ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [*sic*] Maytown", filed document 2 of MRA016-20, 13.

⁴ "Mr Rai Pickering ML100206 – Potato Creek ML100207 – Babbling Brook" in filed document 1 of MRA016-20, 1.

⁵ "Technical Capability Statement ML Application March 2019" in filed document 1 of MRA016-20.

⁶ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [*sic*] Maytown", filed document 2 of MRA016-20, 12.

⁷ Email from Rai Pickering to Doug Morrison, 15 August 2019, in filed document 1 of MRA016-20.

⁸ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [*sic*] Maytown", filed document 2 of MRA016-20.

⁹ Ibid 6.

from upstream Dogleg Creek.¹⁰ Mr Saunders supports his view by reference to a range of data,¹¹ including open file geophysical data. Mr Saunders notes that the small size of the mineralisation in each proposed lease supports a small-scale operation.¹²

[10] I am satisfied that the areas are sufficiently mineralised.

The leases will not result in an acceptable level of development and utilisation of the mineral resources on the leases (s 269(4)(c))

[11] Mr Pickering detailed his proposed development in his application.¹³ In response to a request from the Department of Natural Resources, Mines and Energy, Mr Pickering detailed the equipment he plans to use, including the way in which the ore would be processed.¹⁴ Mr Saunders estimated the yield per tonne in each lease.

[12] Mr Pickering's proposal is more than a hobbyist fossicker but is not a full-scale, 24/7 commercial operation. Given that the leases are within an area of high summer rainfall, I consider Mr Pickering's proposal is an acceptable level of development and utilisation of the mineral resources on the leases.

The size and shape of the leases are not appropriate (s 269(4)(d))

[13] Chelsea submits that the size and shape of the leases are not appropriate having regard to the mineral resources within the application areas, the purposes for which the leases are sought, the level of development and utilisation of the resources within the areas, and the nature of the activities.

[14] Chelsea provided no detail to these submissions to assist me in my deliberations.

[15] I have already found that there is sufficient mineralisation and that the utilisation of the resources is appropriate.

¹⁰ Ibid.

¹¹ Ibid 7.

¹² Ibid 12.

¹³ "Form 09 – Sections 72 and 265 of the *Mineral Resources Act 1989*" in filed document 1 of MRA016-20, 2 [7].

¹⁴ Email from Rai Pickering to Doug Morrison, 15 August 2019, in filed document 1 of MRA016-20; Email from Rai Pickering to Doug Morrison, 19 August 2019, in filed document 1 of MRA016-20.

- [16] MLA 100206 follows a series of creek beds, with additional areas for settling ponds, storing overburden and some small areas of open cut mining.¹⁵ The shape is not unusual for an alluvial gold operation. Mr Saunders notes that there is no evidence of extensions, so that the size and shape match the mineralisation.¹⁶ I can see no reason to recommend against a grant on this basis.
- [17] As I have already noted, MLA 100207 includes space for a camp, an open cut mine and a mill. Mr Pickering has also allowed for a series of dam walls to be built, one of which will supply water for the camp.¹⁷ Mr Pickering has not found mineralisation outside the area of the proposed lease.¹⁸ Again, I can see no reason why the size and shape of the proposed lease are not appropriate.

Mr Pickering has not demonstrated that he has the necessary financial or technical resources to mine the leases (s 269(4)(f))

- [18] Mr Pickering has been working in this area for a number of years. He has three years' experience working for a mining group in the Palmer River region, which includes working on an alluvial wash plant and operating heavy machinery.¹⁹ He already owns small scale mining equipment and has access to technical support.²⁰ He has held an exploration tenure to the satisfaction of DNRME.²¹ He is a member of the North Queensland Miners Association, which helps its members with technical, tenure and other related matters.²² He has engaged AMETS Pty Ltd to provide administrative and management assistance.²³
- [19] Mr Pickering recently sold a business. His accountants believe that the sale will enable Mr Pickering to meet the financial commitments of operating the proposed

¹⁵ "Justification of Term of Mining Lease Application", 12 March 2019, in filed document 1 of MRA016-20; "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [sic] Maytown", filed document 2 of MRA016-20, 16.

¹⁶ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [sic] Maytown", filed document 2 of MRA016-20, 14.

¹⁷ "Justification of Term of Mining Lease Application", 16 April 2019, in filed document 1 of MRA017-20; "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [sic] Maytown", filed document 2 of MRA016-20, 14.

¹⁸ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [sic] Maytown", filed document 2 of MRA016-20, 12.

¹⁹ "Technical Capability Statement ML Application March 2019" in filed document 1 of MRA016-20.
²⁰ Ibid; "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [sic] Maytown", filed document 2 of MRA016-20, 14, 15.

²¹ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [sic] Maytown", filed document 2 of MRA016-20, 12-13, attachment 1.

²² Ibid 13.

²³ "Technical Capability Statement ML Application March 2019" in filed document 1 of MRA016-20.

leases.²⁴ Chelsea has not provided any evidence to suggest that Mr Pickering's financial position is not sufficient.

- [20] Mr Pickering has demonstrated to my satisfaction that he has the necessary financial and technical resources to mine the leases.

Granting the leases will cause soil erosion and other negative impacts to the surface water and environmental values of the lease areas (s 269(4)(j))

- [21] Chelsea submits that Mr Pickering has failed to satisfy the Chief Executive that mining will not have an adverse environmental impact where it is possible mining will have a negative impact on surface water, soil stability and the environmental values of the area.

- [22] As I have noted, Mr Pickering has applied for a standard environmental authority. His compliance with those conditions will regulate and minimise erosion and soil instability.

- [23] Mr Saunders does not believe that either of the proposed leases will have an adverse environmental effect.²⁵ Mr Saunders notes that water flows are seasonal and only occur during the wet season.²⁶ He notes that the creek has already been mined with no surface water issues.²⁷ He has recommended that Mr Pickering use additional bunds for water filtration and to slow water flow.²⁸

- [24] In the face of this information, a submission of the **possibility** of environmental harm, without evidence or justification, is not enough for me to recommend against the grant of the leases.

²⁴ "Financial Capability Statement", 29 March 2019, in filed document 1 of MRA016-20.

²⁵ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [*sic*] Maytown", filed document 2 of MRA016-20, 13 [5] and 15 [5].

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid 13 [5b].

Appropriate land use (s 269(4)(m))

- [25] MLA 100206 lies within the Palmer River Goldfield Resources Reserve national park. Mining is permitted under the Palmer Goldfield Management Plan.²⁹ Mining on this proposed lease is, therefore, an appropriate land use.
- [26] Chelsea's land, which is subject to MLA 100207, is used for grazing. Mining has co-existed with grazing on this land since the 1880s.³⁰ Mr Pickering's proposed mining activities may mean that a very small part of Chelsea will be unavailable for grazing for short periods, but that is a matter for compensation and not a reason to recommend against granting the lease.

Other matters

- [27] There is no suggestion that the provisions of the MRA have not been complied with³¹ or that Mr Pickering's past performance has not been satisfactory.³² There is no evidence that there will be any disadvantage to holders of existing exploration permits or development licences or to existing applicants for exploration permits or development licences.³³ For the reasons already expressed – that the use is appropriate and there are sufficient safeguards to protect the environmental values – I am satisfied that the operations will conform with sound land use management.³⁴ There is no suggestion that any public right or interest will be prejudiced³⁵ and no good reason has been shown for a refusal.³⁶

The term sought is appropriate (s 269(4)(e))

- [28] Mr Pickering initially sought 10-year leases. While preparing material to support the application, Mr Pickering reassessed his proposed work program and applied for a further 15 years.³⁷ I have examined Mr Pickering's proposal. I am satisfied that proper development of the resources will require the full 25-year period requested.

²⁹ "Initial Technical Report on Dogleg Gold Project MLA 100207 & ML 100296 [*sic*] Maytown", filed document 2 of MRA016-20, 15 [6].

³⁰ Ibid 13 [6].

³¹ *Mineral Resources Act 1989* s 269(4)(a).

³² Ibid s 269(4)(g).

³³ Ibid s 269(4)(h).

³⁴ Ibid s 269(4)(i).

³⁵ Ibid s 269(4)(k).

³⁶ Ibid s 269(4)(l).

³⁷ Email from Tamara Grothues to Doug Morrison, 5 June 2019, in filed document 1 of MRA017-20.

Conclusion

[29] I recommend that the Minister grant the proposed MLA 100206 and MLA 100207, each for a term of 25 years.

Order

I recommend to the Minister for Natural Resources, Mines and Energy, as the Minister responsible for the *Mineral Resources Act 1989*, that MLA 100206 and MLA 100207 be granted.