

LAND COURT OF QUEENSLAND

CITATION: *BMAX Holdings Pty Ltd v DiSalvo & Anor*
[2021] QLC 39

PARTIES: **BMAX Holdings Pty Ltd**
ACN 155 625 835
(applicant)

v

Carmen DiSalvo
(non-active objector)

Mareeba Shire Council
(non-active objector)

FILE NO: MRA072-21

PROCEEDING: Hearing of application for mining lease and objection

DELIVERED ON: 25 November 2021

DELIVERED AT: Brisbane

HEARD ON: 9 November 2021

HEARD AT: Brisbane

MEMBER: WA Isdale

RECOMMENDATION: **The Court recommends to the Minister for Natural Resources, Mines and Energy, as the Minister responsible for the *Mineral Resources Act 1989*, that MLA 100259 be granted in whole.**

ORDER: **In accordance with s 269(1) of the *Mineral Resources Act 1989*, the objections in respect of the application and the Land Court's recommendation shall be forwarded to the Minister.**

CATCHWORDS: ENERGY AND RESOURCES – MINERALS – COURTS OR TRIBUNALS EXERCISING JURISDICTION IN MINING MATTERS – QUEENSLAND – OTHER COURTS OR TRIBUNALS – where an application for grant of a mining lease was brought for the primary purpose of mining quartz silica – where there were no active

objectors – where issues of noise, road access and haulage were raised – whether the Land Court should recommend granting or rejecting the mining lease application – where the elements of s 269(4) were considered and the Court recommended granting the application

Environmental Protection Act 1994
Mineral Resources Act 1989 s 265, s 269

APPEARANCES: C Mackney (agent), Avoca Tenement Consulting Pty Ltd, for the applicant
No appearance for the objectors

Background

- [1] The present matter concerns an administrative duty imposed upon the Land Court by s 269 of the *Mineral Resources Act 1989*. Under that provision, the Court must hear all matters in respect of an application for the grant of a mining lease. This took place, and the Court heard the matters as required on 9 November 2021. The Land Court does not make a decision but, as required by s 269(1), must forward to the Minister any objections and its recommendation.

The application

- [2] On 30 June 2020, the applicant applied for a mining lease. Originally for a period of 20 years, that was revised to 5 years. It relates to 47.77 ha of land approximately 23 km south-west of Mareeba. The land is off Barbetti Road. It is proposed to use the surface area for purposes related to the mining. The uses listed include explosives magazine, living quarters, processing plant, road access, workshop and storage.
- [3] A range of minerals is referred to in the application, from antimony to zinc. The primary focus is the mining of silica quartz for export and use in such products as high-grade glass. In the event that any other of the listed minerals are found, their exploitation would depend on their viability at the time.

The objections

- [4] There are two objectors, the local authority and Mr DiSalvo, a neighbouring land holder.

- [5] It is important to note that the local authority, the Mareeba Shire Council, specifically states in its objection form that it does not object to the issue of the mining lease as such. It states:

“Grounds of the objection:

Mareeba Shire Council does not object to the issue of the mining lease subject to a thorough assessment process and the application of reasonable and relevant conditions. Council has the following specific concerns:

1. The "Mt White" mine is located in close proximity to numerous intensive agricultural premises, including those along the intended Barbetti Road access route. Assessment of the mining lease application must consider all potential environmental impacts and where required, mitigating conditions must be applied to prevent adverse impacts on agricultural activities, the environment and residents of these areas. Council is particularly concerned about noise from blasting, crushing, haulage, uncontrolled dust emissions and any potential risk of contaminating the existing agricultural land and water supply. Any night time haulage is likely to have a significant impact on those residents along Barbetti Road.

2. Barbetti Road is presently constructed to a basic bitumen sealed rural road standard which is suitable for the established agricultural traffic. Based on 750,000t/yr of mineral extraction, heavy vehicle movements on Barbetti Road could be expected to increase by up to 55 (one way) trucks per day. The existing standard of Barbetti Road is not capable/suitable to sustain that volume of additional heavy vehicle traffic. Council would require Barbetti Road to be constructed to a standard suitable for the proposed increased heavy vehicle traffic.

3. No information has been provided in relation to the intended transport route between Barbetti Road and the harbour.

If the transport route is to follow State controlled roads, Council requires that loads be fully contained to prevent any loss of material and prevention of dust, particularly when traveling through built up areas such as Mareeba township, which would include the towns commercial center.

If the transport route is intended to use local government roads (such as Chettle Road, Springmount Road), Council will require the applicant to enter in to a Notifiable Road Use Agreement and compensate Council for costs related to the mines road use.”

- [6] The local authority has not chosen to actively pursue the matter before the Court but has simply left its concerns in the form in which they appear on the objection document.

- [7] The other objector, Mr DiSalvo, has likewise chosen not to take an active role before the Court but to simply express his position in the objection form. Mr

DiSalvo's grounds of objection and the facts and circumstances relied on in support of those grounds are as follows:

“Grounds of the objection:

1. Noise pollution and nuisance
2. Road access disruption and damage

Facts and circumstances relied on in support of the grounds of the objection:

1. Objector owns the adjoining property described as Lot 31 on Survey Plan 289715. His residence is located on this property no more than approximately 1.5 kilometers from the proposed mining lease. The mining lease area is elevated and the proposed blasting will cause significant and recurring noise pollution and disruption to the objector's lawful right to quiet enjoyment of his property as there are no natural noise barriers between the blasting site and his property. The objector's residence is close to the road access (Barbetti Road) to the mining lease meaning further noise impact resulting from the expected constant heavy vehicle/machinery use of this Road by the Applicant.

2. The access to the mining lease will be via Barbetti Road which also provides access to the objector's property. The section of this road closest to the objector's residence is unsealed and likely to create significant dust pollution from the constant traffic from the mine site. Barbetti Road is single lane only and not expected to sustain substantial heavy vehicle traffic, resulting in damage thereto and otherwise raising potential safety concerns.”

[8] The Act, by s 269(4), sets out the matters which the Land Court shall take into account and consider. For clarity, each will be addressed in the order to which they appear in the Act.

[9]

- (a) the provisions of this Act have been complied with;

The Mining Registrar has issued a notice as required.¹ There is no submission before the Court to the contrary, and the material provided does not on its face appear to indicate any failure to comply with the Act.

[10]

- (b) the area of land applied for is mineralised or the other purposes for which the lease is sought are appropriate;

¹ Affidavit of Benjamin Peter Emery sworn 3 September 2021 para 6; Ex 1, pages 63, 107; *Mineral Resources Act 1989* s 252(1)(b).

The material provided to the Court indicates that there is an estimated 3 million tonnes of high-grade quartz silica present. That is one of the minerals applied for and is the primary target.

[11]

- (c) if the land applied for is mineralised, there will be an acceptable level of development and utilisation of the mineral resources within the area applied for;

The material is to the effect that there is an estimated 3 million tonnes of the mineral sought in the area in question. Mr Emery, in his affidavit, states that the mining target volume has been adjusted to about 450,000 tonnes per annum, a significant amount but much less than the 750,000 tonnes which the Council referred to in its material. It is proposed to mine, crush, screen and transport silica quartz. The necessary equipment and infrastructure will be put in place in order to achieve this. It appears that there will be an acceptable level of development and utilisation of the mineral resources within the area which has been applied for.

[12]

- (d) the land and the surface area of the land in respect of which the mining lease is sought is of an appropriate size and shape in relation to—
 - (i) the matters mentioned in paragraphs (b) and (c);
 - (ii) 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;

The land has an area which is in excess of 47 ha. The mining lease sought is over the whole of the surface area. The land is of a regular shape so as not to present obvious abnormal obstacles to the activities proposed. The applicant believes that the size and shape are appropriate and there is no submission to the contrary.² Therefore, the answer to question (d) is in the affirmative.

[13]

- (e) the term sought is appropriate;

² Affidavit of Benjamin Peter Emery sworn 3 September 2021 para 9.

The applicant claims that 5 years will be sufficient to allow the project to be “completed close to a final stage”.³ It believes that it has the option to seek more time if that is required.⁴ There is no submission to the contrary. The Minister may wish to seek the advice of the Department in relation to this.

[14]

- (f) the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease;

The affidavit of Benjamin Peter Emery, the sole director of the applicant, sworn on 3 September 2021, makes this claim and refers to documents attached to the applicant’s referral statement at item 12 in support of the claim. There is nothing put to the Court that seeks to contradict this.

[15]

- (g) the past performance of the applicant has been satisfactory;

The applicant’s referral statement contains the following:

“13. Give details of your (or your company’s) past experience concerning mining: (if insufficient space, please attach additional sheets as part of this form as appropriate)

BMAX Holdings Pty Ltd has held exploration permits in Queensland since 2016. The Sole Director, Ben Emery has been involved in the mining sector for over a decade, most recently he held the position of CEO for a private Iron Ore company which was mining and shipping bulk shipments to international markets. Ben has successfully developed multiple green-field exploration projects in to producing mines. It is proposed that Daniel Skepper, a qualified Mine Manager will be completing the mine plan in conjunction with Zenith.

14. As far as you are aware, have you, your company or any of its directors ever had any of the following under the *Mineral Resources Act 1989*:

- | | |
|---|-----|
| a) Notice to rectify non-compliance or damage | No |
| b) Notice to show cause | No |
| c) Tenure cancelled | No |
| d) Penalty imposed | No |
| e) Conviction | No” |

[16] This was not contradicted. It is concluded that the answer to question (g) will be in the affirmative.

³ Ibid paras 10–12.

⁴ Ibid para 11.

[17]

- (h) any disadvantage may result to the rights of–
 - (i) holders of existing exploration permits or mineral development licences; or
 - (ii) existing applicants for exploration permits or mineral development licences;

The affidavit of Mr Emery is to the effect that no disadvantage in terms of (h) will occur as there are no holders or applicants as referred to in that provision.⁵ This is uncontradicted.

[18]

- (i) the operations to be carried on under the authority of the proposed mining lease will conform with sound land use management;

The current land use is grazing. After mining, the land will be re-contoured and rehabilitated.⁶

[19]

- (j) there will be any adverse environmental impact caused by those operations and, if so, the extent thereof;

It seems obvious that there will be adverse environmental impact. Permit number EA0002904 has, however, been issued under the *Environmental Protection Act 1994* in respect of the proposed mining activities on this tenure, mining lease 100259.⁷

[20]

- (k) the public right and interest will be prejudiced;

There is no public infrastructure on the area applied for.⁸

[21]

⁵ Ibid para 15.

⁶ Ibid para 16.

⁷ Ibid paras 17–19, and Exhibit 4 to the affidavit.

⁸ Ibid para 20.

- (l) any good reason has been shown for a refusal to grant the mining lease;

In view of the environmental authority, permit EA0002904, which the Court is entitled to assume will be honoured and enforced in good faith, the answer to this question must be in the negative. Mr DiSalvo is entitled to have his rights respected and the environmental authority stands in support of that. Mr DiSalvo's concerns regarding noise, which could be expected to include the noise of blasting, dust and the effects of increased use of the road are very legitimate ones. The permit is clear in setting out the duty of the holder – by its references to the *Environmental Protection Act 1994*. It also refers to various offences under that Act. Compliance with the terms of the permit is essential. In his oral evidence, Mr Emery expressed willingness to engage with Mr DiSalvo in order to address any concerns about the effects of blasting and stated that he had already attempted to do so.⁹

[22]

- (m) taking into consideration the current and prospective uses of that land, the proposed mining operation is an appropriate land use.

The land is currently used for grazing.¹⁰ In view of the evidence of mineralisation and the mining proposal which the Court has been informed of, the answer to this question must be in the affirmative. It is noted that the volume target has been reduced to 450,000 tonnes per annum.¹¹

The Shire Council's concerns

[23] The local authority has expressed concerns in relation to environmental aspects and the standard of Barbetti Road. The environmental aspects are able to be dealt with in view of the environmental authority, and the road is a matter within its purview as local authority.

Recommendation

⁹ T 1-10, line 16 to 1-11, line 40.

¹⁰ Ibid para 15.

¹¹ Ibid para 31.

The Court recommends that the application be granted in whole.

Order

In accordance with s 269(1) of the *Mineral Resources Act 1989*, the objections in respect of the application and the Land Court's recommendation shall be forwarded to the Minister.