LAND COURT OF QUEENSLAND

CITATION:	*Wallace v Anson Holdings Pty Ltd & The Environmental Protection Agency* [2009] QLC 0063
PARTIES:	In the matter of an application for ML 20415 Ian Earl Wallace (applicant) and Anson Holdings Pty Ltd (objector) and Chief Executive, Environmental Protection Agency (statutory party)
FILE NOS:	AML00096/2008 ENO00149/2008
DIVISION:	Land Court of Queensland
PROCEEDING:	Application for mining lease; objection to grant of mining lease; objection to the environmental authority application; objection to the draft environmental authority for the application
DELIVERED ON:	6 May 2009
DELIVERED AT:	Brisbane
HEARD AT:	Mareeba
HEARING DATE:	25 November 2008
MEMBER:	Mr RP Scott
ORDER:	**1. It is recommended to the Honourable the Minister for Mines and Energy that the Objection to the Environmental Authority Application and to the Amended Draft Environment Authority are not sustained.** **2. It is further recommended to the Honourable the Minister for Mines and Energy that Mining Lease no. 20415 be granted over the application area for a term of 21 years.**

CATCHWORDS:	Mining – application for lease – objections by landowner – landowner limited to grounds of objection at Court hearing Mining – *Mineral Resources Act 1989* s.245 – Court has no general supervisory jurisdiction over Mining Registrar – statutory requirements satisfied Mining – application for lease – objection claims applications invalid – discussion on Court's limitation on jurisdiction under *Mineral Resources Act* Mining – application for lease – meaning of "applicant" Mining – application for lease – construction s.132 *Mineral Resources Act* Mining – application for lease – substantial delay in Mining Registrar considering application – delay not relevant to Court's exercise of jurisdiction
APPEARANCES:	Mr J Trevino (instructed by Mr A Kerr of Preston Law, Cairns) appeared on behalf of the applicant Mr GT Houen of Landholder Services Pty Ltd, Toowoomba appeared as agent for the objector Mr EC Morais (Legal Officer, Environmental Protection Authority) appeared on behalf of the statutory party

Background

[1] The applicant has applied for a mining lease (MLA 20415) pursuant to s.245 of the *Mineral Resources Act 1989* (the "MR Act") and an associated Standard Environmental Authority (mining lease) pursuant to chapter 5 of the *Environmental Protection Act 1994* (the "EP Act").

[2] The application for a mining lease is made over 53.9589 ha of land (the "application area") on Lot 4513 on PH 1727, County of Dagmar, Parish of Northedge, located approximately 7 km south of Mt Carbine (the "parent parcel" known as Fonthill Station). Whilst the identification of access to the application area is a matter of debate between the parties I will describe access as being by way of the Mulligan Highway then a dedicated but unconstructed road through the parent parcel then via a track to be constructed also over the parent parcel.

[3] The mining lease application was lodged at the office of the Mining Registrar at Mareeba on 12 November 2003. On 30 May 2008 the landholder lodged objections to both the mining lease application and the environmental authority application. The application was originally made by Ian Earl Wallace and Stuart Valentine Foster. An assignment of Mr Foster's interest to Mr Wallace was approved by the Mining Registrar on 24 August

2007. It will be convenient to refer to Mr Wallace throughout these reasons as if he were the sole applicant.

[4] Mr Wallace was called to provide evidence in support of the application whilst George Quaid, company director and an officer of the objector company, provided evidence in support of the company's objections. In addition, the following affidavit evidence was placed before the Court:

- Affidavit of Ian Earl Wallace filed 20 October 2008
- Affidavit of Michael Gilbert filed 29 October 2008
- Affidavit of Ian Earl Wallace sworn 24 November 2008 – filed by leave of the court on 25 November 2008
- Statutory Declaration of Michael Gilbert sworn 9 May 2008
- Affidavit of George Quaid filed 31 October 2008

[5] Many of the grounds of objection with respect to the mining lease application were formal in nature, headed "application defective". I will deal with this bulk of the grounds of objection first of all, however before I come to the detail there is one observation that I would like to make.

[6] Some of the claimed defects in the application were not the subject of an express submission for the objector as to the consequence of any conclusion by me that the suggested defects did, in fact exist. In other instances, a submission has been clearly made that the application is "invalid" on the basis of the suggested defect. In addition there is a submission made broadly that the Court ought to seriously consider the requirement under s.269(4) of the MR Act to "*take into account and consider whether – (a) the provisions of this Act have been complied with*".

[7] It seems to me that the jurisdiction of the Court with respect to a mining lease application is administrative in nature, resulting in a recommendation to the Minister under s.269(2) and (3) which, in summary, provide for a recommendation to grant the application or reject it in whole or in part and to include recommendations as to conditions that might apply. In forming a view as to the recommendations that might be made, the Court is required to take into account and consider all of the various matters set out in s.269(4) which, in effect, comprises a checklist against which an application is to be measured. Reliance cannot, in my view, be placed on s.269(4)(a) to found a declaration that a particular application is invalid. The effect of such a declaration would be to hold that the application has no legal effect and that its merits in accordance with the checklist of items contained elsewhere in s.269(4) cannot and ought not to be carried out.

[8] Section 33 of the *Land Court Act 2000* (the "LC Act") relevantly provides:

> **33 Land Court may make declarations**
> (1) Any person may bring proceedings in the Land Court for a declaration about—
> (a) a matter done, to be done, or that should have been done under this Act or another Act giving jurisdiction to the court; and
> (b) the construction of any legislation for the purpose of proceedings in which the court has exclusive jurisdiction.

[9] The application of that provision was considered by the Land Appeal Court in *Maroochy Shire Council v Maroochy Central Holdings Pty Ltd*[1] where the Court said:

> "[32] Section 33 of the *LCA* provides the Land Court with a useful adjunct to its jurisdiction under the Act, enabling a decision about the construction or the application of the Act to be made in advance of the determination of the entire dispute between the parties. In some cases using this additional jurisdiction may facilitate the resolution of the larger dispute between the parties.
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> [33] There is nothing in the language of s 33 of the *LCA* to suggest that it is concerned with other than the application or construction of legislation in respect of which the Land Court has jurisdiction. It is not intended to confer on the Land Court a jurisdiction similar to that which involves the review of administrative decision making, as conferred by the *Judicial Review Act 1991*."

[10] It is clear from what the Court said on that occasion that s.33 of the LC Act does not provide a general supervisory jurisdiction with respect to applications such as the present. In circumstances where, as I have said above, the Court is undertaking the administrative task of considering a mining lease application, it is directed towards the requirements of the MR Act especially s.269(4). It can only consider the exercise of its jurisdiction under s.33 of the LC Act where an originating application requests that. I say nothing about whether s.33 would permit such an application with respect to a mining lease application.

[11] Having said that, I should make clear that I understand that this Court is required by s.269(4)(a) of the MR Act to ascertain whether relevant provisions of that Act have been complied with. If non-compliance is found, it then falls to the Court to determine the effect, if any, of such non-compliance. I will now turn to consider the grounds of objection relevant to s.269(4)(a); that is, to do with compliance with the Act.

<u>Ground 1.1</u>

[12] The objector complained that the application was not properly signed by the applicant in that the signature appears in the part of the form that should be used if authorising another person to lodge the application.

[13] There is no requirement in the MR Act that the application be signed. That requirement is found on the form. No other person was authorised on the form to lodge the application. The signatures are on the correct page, but in the space below the correct

[1] [2003] QLAC 0024.

position. No reasonable person would be misled by the manner in which the signatures were included. "De minimis non curat lex" – the law does not concern itself with trifles.

Ground 1.2

[14] This ground said that the mining lease application does not carry any stamp or certification of its receival and lodgement with Mining Registrar.

[15] There is no requirement in the MR Act to which I was referred which requires the application to carry a stamp or certification of the type referred to in this ground of objection.

Ground 1.3

[16] The complaint is that the application incorrectly states that the application is within an existing Exploration Permit not held by the applicants i.e. EPM 14006.

[17] The uncontradicted evidence of Mr Wallace was that EPM 14006 was actually an application for an Exploration Permit for minerals made by him – an application subsequently cancelled. The question at item 4 of the application form asks whether the land is situated within an Exploration Permit or Mineral Development Licence not held by the applicant. The inclusion of information an Exploration Permit was held by the applicant, though not completely accurate, indicates that the answer to the question is "No".

[18] The contention by the objector is therefore not accurate as it appears to not recognise the double negative involved.

Ground 1.4, Ground 1.5 and Ground 1.6

[19] These grounds argue that as the Certificate of Application was not issued by the Mining Registrar until 24 April 2008, the status of the lease application was that of being a "prospective application" from the date of its lodgement until the date of the issue of the Certificate of Application. This ground goes on to argue that as at 24 April 2008 the subject land was covered by Exploration Permit 14872 held by Stonebase Pty Ltd (that permit being granted on 12 December 2005 for "all minerals other than coal") there was a requirement as provided for in s.248 of the MR Act, for the consent of the "existing authority", Stonebase to be obtained by the applicant. Section 248 relevantly provides:

248 Applicant must obtain consent or views of existing authority holders

(1) This section applies if a person applies for a mining lease over land—

(a) covered by an existing exploration permit, mineral development licence or mining lease (the ***existing authority***) held by someone else; or

(b) covered by, or in the area of, an existing geothermal exploration permit (also the ***existing authority***) held by someone else.

(2) The applicant must obtain the existing authority holder's written consent to the application if the lease applied for is over land covered by the existing authority and is for—

(a) the same minerals as the existing authority; or

(b) a purpose mentioned in section 234(1)(b).

[20] This ground of objection fails to acknowledge the force of s.132(1) of the MR Act which provides:

> **132 Exclusion of land from exploration permit if subject to other authority under Act**
> (1) Where, at the time the lodgement of an application for the grant of an exploration permit is accepted, land is the subject of—
> (a) a mining claim, mineral development licence or mining lease; or
> (b) an application for a mining claim, mineral development licence or mining lease;
> that land and the surface of that land shall be taken to be excluded from the land specified in the exploration permit—

[21] The term "applicant" is not defined in the MR Act. The Macquarie Dictionary 2nd Edition defines applicant as "*one who applies; a candidate*". That might be referred to as the ordinary meaning of the term and it is that meaning that should be adopted in my view unless some contrary intention can be garnered from the statute. The plain meaning of "person applies" and "applicant" in s.248 and the word "application" in s.245 and the reference to "an application for a … mining lease" in s.132 all indicate that the statute recognises that the lodgement of an application for mining lease form is the lodgement of an application at the date it is lodged and that, accordingly, the person making the application is the applicant on that day. The fact that s.252 of the Act requires the Mining Registrar to prepare a Certificate of Application, if satisfied as to the contents of the application; and the requirement for the applicant to give a copy of that Certificate to the owner or owners of the land does not mean that the application for the mining lease can only be so called once the Certificate of Application issues. Indeed s.252(4) acknowledges in its language a distinction between the Certificate of Application and the application for the mining lease. I refer also to s.250(2) which empowers the Mining Registrar to "reject an application for a mining lease": a clear indication that it is appropriate to describe an application for a mining lease as such, even though it is rejected by the Registrar.

[22] It follows then that the effect of s.248(1) is to require the applicant for a mining lease to obtain the relevant consent with respect to an "existing authority" at the time of the making of the application. Logically therefore, s.248(1) refers only to any "existing authority" which, on the facts of the present matter, was in place at the date the application was lodged on 12 November 2003. Stonebase held no "existing authority" as at that date.

[23] In submissions, reference was made for the objector to the "Exploration Permit Public Enquiry Report" in relation to the Stonebase exploration permit. Particular reference was made to the "exclusions" included in that report which, amongst others, referred to "any current mining claims, mineral development licences and mining leases at the time of

lodgement of this permit pursuant to s.132 of the *Mineral Resources Act 1989*." It was submitted on the basis of that information that s.132 must therefore refer only to mining leases and not to applications for mining leases. Section 132 is to my understanding, plain in its reference to applications for mining leases – a construction which cannot be altered by the apparent error in the Public Enquiry Report relied upon by the objector.

[24] Further, the objector referred to a letter by the Mining Registrar dated 24 April 2008 in which the Registrar required the applicant to give a copy of the various application documents to "each holder or applicant for, an Exploration Permit or Mineral Development Licence over the land for a mineral other than a mineral to which the proposed mining lease relates". The letter goes on to tell the applicant that if the lease application area is covered by someone else's Exploration Permit or Mineral Development Licence for different minerals, he needs to obtain and lodge the written views of that person as is required by s.248(5) of the MR Act. The objector seeks to rely on the contents of that letter to indicate that s.132 means something other than the plain meaning that an application for a mining lease of the type made by Mr Wallace is excluded from the land specified in the application for exploration permit made by Stonebase. There is no rule of statutory interpretation which permits the plain words of the statute to be displaced by evidence of the type referred to by the objector. It is clear to me that at the time the application for mining lease by Mr Wallace was made, EPM 14872 did not exist, hence a requirement to obtain the consent of the holder under s.248 did not arise.

Ground 1.7 and Ground 1.8

[25] These grounds argue that the application does not contain information required by s.245 of the MR Act relating to the proposed mining program, the method of operation, the start date of mining, the outline of proposed infrastructure, the purpose for which the surface is to be used, detail of the size and shape of areas to be mined or used for crushing, stockpiling or for a camp, an access route, why the lease should be granted in the area and shape described in the application and why a 50 year term nominated in the application is justified.

[26] Section 245 of the MR Act sets out what an application for the grant of a mining lease must include and s.250 provides that the officer with whom an application is lodged may request further application relating to the requirements set out in s.245(1) of the MR Act and may reject the application. Section 252 provides that upon the Mining Registrar being satisfied that the applicant is eligible to apply for the mining lease and that the applicant has complied with the requirements of the MR Act with respect to that

application, the Mining Registrar shall prepare a Certificate of Application for a mining lease.

[27] Now it is quite clear that the authority to decide whether an application satisfies the provisions of s.245(1) lies with the Mining Registrar. The requirement of this Court is to hear an application (s.268) and to make a recommendation under s.269(2) having taken into account the requirements of the "check list", as I have called it, contained within s.269(4). Whilst s.269(4)(a) provides that the Court shall take into account and consider whether the provisions of the MR Act have been complied with, that would appear to me in the context of the present discussion to be concerned with whether a Certificate of Application by the Mining Registrar issued and whether the requirements of s.245(1) were sufficiently to satisfied to allow that Certificate to issue. For example, s.245(1)(o) refers to "proof …of the applicant's identity". As long the application includes something capable of satisfying the Mining Registrar as to the applicant's identity, that requirement is satisfied in my opinion. It is not for me to exercise my mind as to whether I would have been satisfied as to the proof of identity proffered in the application. The evidence shows that the requirements of s.245(1) MR Act have been met in this application.

Ground 1.8 (second)

[28] This ground alleges that the documents given to the objector by the applicant with the Certificate of Public Notice did not include copies of four plans which were part of the mining lease application, nor of the Public Notice of Application "as was required under s.252B(1)(c)(i)". I notice that s.252B(2)(b) MR Act provides that:

> (2) For subsection 1(c), the application for the mining lease—
> (a) does not include any part of the application stating the applicant's financial and technical resources; and
> (b) includes any additional document about the application given by the applicant to the mining registrar

[29] The public notice document referred to is correctly entitled "Certificate of Public Notice" in s.252B(1)(c)(i). This is a document issued by the Mining Registrar under s.252A(2)(b). It is a certificate that issues following the issue of the Certificate of Application and, assuming that certain EP Act pre-requisites are met.[2] In this case both the Certificate of Public Notice and the Certificate of Application issued on the same day. The only difference in content between the two is that in the Certificate of Public Notice there is included the "last objection day" for lodging objections to the application.

[30] Having regard to Mr Quaid's affidavit at item 5f, and by reference to exhibit GQ3 to that affidavit, it is clear that contrary to ground 1.8 (second) the objector was served with the

[2] s.252A(1)(b).

Certificate of Public Notice described under the provision referred to in the ground of objection. As I understand Mr Quaid's affidavit, the objector was not served with a copy of the Public Notice of Application for mining lease and the Environmental Authority (mining lease). That document is required to be published in an approved newspaper[3] but I cannot find nor was not referred to any requirement that it be served on the landowner.

[31] The application for mining lease (exhibit 1) includes five plans. In his affidavit, Mr Quaid deposed to the four plans said not to have been included as part of the mining lease application served on him. I deal with the competing evidence below[4] as to which documents may or may not have been served on the landowner and include and repeat those observations here. The issue regarding the four plans can, however, be easily disposed of on two other bases. First, it is apparent that by the date of preparation of the objection the landowner was in the possession of the relevant four plans – however that came about. Any, if any, failure to supply all of the plans with the mining lease application was therefore cured. I refer now to s.392 MR Act which provides:

> **392 Substantial compliance with Act may be accepted as compliance**
> Where this Act provides that in respect of any matter, the Governor in Council, the Minister, the chief executive, the Land Court, the tribunal or a mining registrar may act if anything has been done in the prescribed way, but that thing has not been done in the prescribed way, the Governor in Council, the Minister, the chief executive, the Land Court, the tribunal or, as the case may be, a mining registrar who is satisfied that there has been <u>substantial compliance</u> with the prescribed way in respect of that thing may record that fact in writing and may so act and the thing shall be deemed to have been done in the prescribed way. (my emphasis)

I am satisfied that in respect of the issue of the four plans, there has been substantial compliance.

[32] The second basis requires reference to the ground of objection which says:

> "… The application does not provide us with the information we need in order to understand what justification there is for grant of the mining lease, and to understand what effect the proposed mining would have on our land or on our property management."

[33] These assertions are, in effect, dealt with by the first basis discussed above. There is an additional point. That is, the assertions were not supported and properly made out by any particulars, either in Mr Quaid's affidavit or in examination-in-chief. There was therefore no demonstrated prejudice to the landowner.

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3 s.252B(4).

4 At [38] and [39].

Ground 2.1

[34] This ground complains that no copy of the Certificate of Application was included in the documents served on the landowner by the applicant. Section 252(4) of the MR Act clearly requires the service of such Certificate on "each owner of the land".

[35] The applicant concedes that the evidence does not establish that a copy of the Certificate of Application was given to the owner. It was submitted for the applicant that given that the Certificate of Application and the Certificate of Public Notice issued on the same day and that both certificates contained the same information except that the latter certificate contained information concerning the objection period; and that the Certificate of Public Notice was received by the respondent, that it would be appropriate for the Court to conclude that s.392 of the MR Act applies to permit the application to proceed as if the Certificate of Application had been served.

[36] The objector does not claim that any prejudice arose by the failure to serve this certificate. Indeed, for the reasons implicit in the applicant's submissions, none could arise in my view. I am of the view that there has been substantial compliance with s.252(4). It was submitted for the objector that this Court has no discretion to exempt the applicant from a statutory obligation to give all application documents to the landowner and that such a breach is fatal. The authorities referred to for the objector did not establish the foundation for this submission. That is simply because in the cases referred to, there was no relevant statutory equivalent to s.392 of the MR Act which expressly provides an avenue whereby certain statutory requirements which might otherwise appear to be mandatory may be deemed to be satisfied and not simply reduced to being described as directory requirements.

[37] In his affidavit, Mr Quaid claimed that certain documents other than the Certificate of Application were not served on the owner by the applicant. These documents were not referred to in the grounds of objection. On the basis of *Lee v Kokstad Mining Pty Ltd*[5] they cannot subsequently be made grounds of objection. Nevertheless I need to consider the issue of compliance with the statute.

[38] In the affidavit of Michael Gilbert he deposed to having sent to the objector all of the relevant documents. Mr Gilbert was not required for cross-examination by the objector. Mr Quaid was cross-examined and, in summary, did not have sufficient independent recall of which documents he had received or not received. He relied on the system by which his mail reached him in Cairns or in Brisbane[6] though conceded that it was possible that mail had gone astray following its receipt. In his affidavit, Mr Quaid said

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5 [2007] QCA 248 at [9] and [47] quoted below at [65].

6 He resides in both centres.

(page 4) that he had sent his complete file regarding the mining lease application to Mr George Houen and was informed by Mr Houen that the only copies of the claimed missing documents are copies which Mr Houen had sent to Mr Quaid by fax after he obtained them from other sources. In evidence, Mr Quaid described how he would forward copies of documents to Mr Houen following their receipt and his perusal of them. Mr Houen may have been able to supplement Mr Quaid's evidence in regard to this issue, but no affidavit from him was filed nor was he called as a witness. I note that Mr Houen prepared the objection notice for the objector.

[39] It seems to me that I am left in the position of having to accept what was deposed to in Mr Gilbert's affidavit as to the document he sent to the landowner.

<u>Objections 3.1 and 3.2</u>

[40] In these grounds the objector complains that whilst the mining lease application was lodged on 12 November 2003, about four years and five months was permitted to elapse by the Mining Registrar before the Certificate of Application and the Certificate of Public Notice were issued. It goes on to say that there was no reason or justification for that lengthy delay and that during that period the applicant had been "allowed to hold a de-facto lease over (the objector's) land". Mr Quaid said in his affidavit (page 5) that the lease application has been allowed to become a "land banking" instrument at the company's expense. He went on to describe the mining lease application as a "sleeper mining lease" and said that it was a serious blot on the title of the land and a significant encumbrance.

[41] I can understand that a landholder may have a concern about a mining lease application lying dormant for a substantial period but do not accept that the applicant before me gained a benefit in that regard. None was referred to in the evidence. Even if a benefit could be made out I do not understand how that becomes relevant in the process of this Court considering the application for a mining lease.

[42] It was submitted for the objector (para 63) that the Mining Registrar had failed to observe due process and to efficiently perform the statutory duties required by the MR Act. That submission was not supported by reference to any due process requirement not adhered to by the Mining Registrar. The Mining Registrar was not made a party to the hearing of the mining lease application so I have no evidence as to the cause of what seems on the face value to have been a considerable delay. The Land Court does not have supervisory jurisdiction over the Mining Registrar. I am confined to considering the application only and in that regard I notice that s.269(4)(a) does not apply to any requirements of efficiency or delay accept with respect to expressed timelines such as one finds in

s.252B. I say nothing as to whether the objector might have a cause of action with regard to this delay, but can say that no issue of compliance with the statute which is relevant to my considerations has been raised before me.

Objection 3.3

[43] This ground of objection says, "Section 252A(2) of the Act requires that within 5 business days of receiving the draft environmental authority for the mining lease application, the Mining Registrar must issue the Certificate of Public Notice. The draft environmental authority was issued on 17th August 2007, yet the Certificate of Public Notice was not issued until about 9 months later."

[44] I do not understand s.252A(2) to require the Mining Registrar to issue the Certificate of Public Notice within five business days as submitted. The provision applies only to the period of time running from the date of the issue of the Certificate of Application and its endorsement under s.252(2). The relevant Certificate of Application was not endorsed until 24 April 2008 and the Certificate of Public Notice was issued within five business days of that date, being issued on the same day.

[45] Ground of objection 4 was abandoned by the objector.

[46] I will now turn to deal with the Objections to the Environmental Authority Application – Objection to Draft Environmental Authority.

Ground 1

[47] The objector complains to not having received the required documents relating to the application for the Environmental Authority.

[48] I have already referred to Mr Gilbert's affidavit of 29 October 2008 and the reference therein to documents served upon the landholder by registered post. In addition to that affidavit there was a statutory declaration of Mr Gilbert dated 9 May 2008 in which he swore to having served the Public Notice Notification requirements on the Tablelands Regional Council, the landowner and having published that notification in the Tablelands Advertiser on 7 May 2008. For similar reasons to those given above[7] I must conclude that the evidence supports a finding that the relevant documents were served on the landowner.

[49] There is a further document, "the draft environmental authority", which the landowner says was not served on it and in respect of which there is no evidence from the applicant that service took place. Notwithstanding that evidence I have to say that I can find no provision in the EP Act or the MR Act nor was I referred to any provisions in those statutes requiring service of the Draft Environmental Authority on the landowner.

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7 At [38] and [39].

[50] Ground of objection 2 was abandoned by the objector.

Grounds 3.1 and 3.2

[51] These grounds say that the application for and the issue of the Draft Environmental Authority were premature. The grounds argue that at the time of the issue of the Environmental Authority on 20 November 2003 and the Amended Draft Authority on 17 August 2007 no Certificate of Application had been issued by the Mining Registrar, therefore Mr Wallace was not an eligible applicant for a mining lease for similar reasons to those referred to above.[8]

[52] Under s.153 of the EP Act a person may apply for an environmental authority only if the person is a "holder of, or applicant for, a relevant mining tenement". The term "applicant" is not relevantly defined in the Act, however, for the reasons discussed above[9] I have concluded that at the time of the lodgement of the application for mining lease Mr Wallace became an applicant for such a lease.

Grounds 4 and 6

[53] These grounds complain that the application for the Environmental Authority contained insufficient detail.

[54] Whilst the objector separated the objection with respect to the application and with respect to the draft environmental authority as it issued, the submissions in support of the objections and the evidence relevant to them was merged in such a way that it is convenient to deal with these two broad objections together.

[55] In Mr Quaid's affidavit (paras 14-17) he says that in the application as considered by the Environmental Protection Agency there was effectively no mining program, no detail as to whether it would be underground or open cut, no details of the chemical nature of overburden and risk if any of acid or saline drainage, no details of run-off if any affecting the nearby Mitchell River and no details of how the extracted substance would undergo primary crushing and be stockpiled. Other details not included related to transport of ore from the site, chemicals if any to be used, overburden storage or rehabilitation, final voids etc.

[56] In the hearing before me the Statutory Authority relied upon the following affidavit material:

a. Affidavit of John Gerard Lane dated 18 November 2008 ('Lane's first affidavit');
b. Affidavit of Ahmad Faridur Rahman dated 19 November 2008 ('Rahman's affidavit'); and

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8 At [19].
9 At [21] and [22].

c. Affidavit of Hon Lane dated 20 November 2008 'Lane's supplementary affidavit').

[57] The application was originally considered by Mr John Lane, manager of the Licences and Permits Co-ordination Unit and a delegate of the Statutory Party with power to make decisions under s.207 of the EP Act which relevantly applies in this matter. It was under Mr Lane's authority that the Draft Environmental Authority, which issued on 20 November 2003, was granted. Mr Ahmad Rahman who was the manager of the Eco Access Customer Service Unit at the time of the application for the amendment of the Environmental Authority considered the amendment and made the decision to grant the Amended Environmental Authority pursuant to a delegation which he held to make decisions on behalf of the Statutory Party, including decisions under s.257 of the Act which applied to the amending application.

[58] Category A and category B environmentally sensitive areas are defined in sections 1 and 2 of schedule 1A to the regulations to the EP Act. The Mitchell River adjacent to the proposed mine is not a category A or category B environmentally sensitive area according to Mr Lane's first affidavit. On the basis of that Mr Lane formed the view that the proposed mining activity would have a low risk of serious environmental harm (para 25a of Mr Lane's first affidavit) and he proceeded to assess the application having regard to that viewpoint.

[59] Condition G4 of the draft environmental authority requires the applicant to comply with each of the standard environmental conditions contained in the Code of Environmental Compliance for Mining Lease Projects (January 2001) referred to in exhibit JL004 of Mr Lane's second affidavit. Condition 1 under heading 3.1 of the Code requires the applicant to provide the statutory party with a plan of operation at least 28 days prior to carrying out any activities on site except where a shorter period is approved by the Statutory Party. Section 234 of the EP Act provides detailed statutory requirements for a plan of operations for a mine. Under s.233 of the EP Act the applicant must not carry out any activity under the mining lease granted unless it has submitted its plan of operation to the statutory party. The Code also provides detailed conditions for the protection of the environment; viz conditions 7, 10, 21 and 24 of the Code relate to the protection of a watercourse, waterway, wetland or lake.

[60] The Statutory Party submitted that it had sufficient detail to assess the application for an Environmental Authority and to issue a Draft Environmental Authority. The Statutory Party notices that the applicant was required to provide further detail of the mining activity at the time that it submitted its plan of operation and that the requirement for that

plan and the requirement to comply with the Code and the Act relate to the protection of the environment as perceived by Parliament. In short, the submission is that the Statutory Party had sufficient information to perform the task it did at the time but notices that the task is ongoing having regard to the subsequent need for a plan of operations and the requirement to comply with the Code and the Act.

[61] I will not set out in the same level of detail that Mr Rahman had regard to when he undertook the exercise of his delegated authority in respect of the Amended Draft Environmental Authority except to say that he undertook that task in a manner consistent with the legislation.

[62] Any claim that consideration of the application for an Environmental Authority was premature is ill-founded by the objector. There is no requirement in the Legislation for the applicant to provide to the Environmental Protection Agency the level of detail listed in the objection by the objector as not having been provided. I will now turn to consider the application for the mining lease in terms of the requirements of s.269(4) MR Act.

Section 269(4)(b)

[63] In the mining lease application the application specifies tin, tungsten, gold, silver, silica and quartz and includes a reference to camp and plant.

[64] Mr Wallace said that silica and quartz were visually observed by him and that the other minerals were expected to be found in association. His experience, which was outlined in the evidence, and the fact that he consulted with a geologist and a prospector with respect to the issue of mineralisation indicate to me that his observations concerning the mineralisation of the mining lease area can be accepted. His primary interest is clearly the extraction of silica and he said that it is intended to export that product for use in flux, glass and as a paint conditioner. To my understanding the products identified are minerals[10] including silica which is intended for use for its chemical properties. I conclude that the land is mineralised. I also conclude that the use of part of the land for a camp and for plant are uses that are appropriate for the mining lease sought.

[65] The grounds of objection do not complain that the application area is not mineralised in terms of s.269(4)(b). Nevertheless, the objector attempted to lead evidence on the issue of mineralisation. In *Lee v Kokstad Mining Pty Ltd*[11] Jerrard JA said:

> "[9] Section 268 has other provisions, but none relevant to this appeal. The quoted sub-sections were considered by this Court in *ACI Operations Pty Ltd v. Quandamooka Lands Council Aboriginal Corporation*. This Court held that s. 268(3) was to be construed as qualifying s. 268(2), and that accordingly the LRT was precluded from hearing submissions or evidence from an objector to the grant of a mining lease on a matter not raised in its duly lodged objection. The decision in *ACI Operations v. Quandamooka Lands Council*

[10] s.6 MR Act.
[11] [2007] QCA 248.

> *Aboriginal Corporation* has the effect, as put by Mackenzie J. in that matter, that the Tribunal's right to hear such persons and inform itself in such a manner as it considered appropriate under s. 268(2) is subject to the limitation in s. 268(3) that, whatever else the Tribunal may do to inform itself of what is required to satisfy itself, it is precluded from entertaining an objection by an objector to an application or any ground thereof, or any evidence in relation to a ground, where there has not been an objection duly lodged in respect of a matter which an objector subsequently wishes to agitate."

Wilson J agreed with that reasoning:

> "[47] …
> In *ACI Operations Pty Ltd v. Quandamooka Lands Council Aboriginal Corporation*[12] the Court of Appeal held that s. 268(3) is to be construed as qualifying s. 268(2), and that the Tribunal is thus precluded from hearing submissions or evidence from an objector to the grant of a mining lease on a matter not raised in a duly lodged objection. A duly lodged objection is one lodged before the last objection day.[13]"

Accordingly, I declined to admit evidence from the objector relating to the issue of mineralisation.

Section 269(4)(c)

[66] In my view it is not a matter for this Court to assess the economic viability of the project proposed by the applicant. That is a matter of commercial assessment and for the applicant to take on any risk involved, such as it is. It seems to me, however, that Mr Wallace is an experienced miner and could be expected to make a success of the venture. He proposes to mine the area using open-cut mining methods of drill and blast with primary crushing and stockpiling on site but final processing and bagging of the ore being carried out in Mareeba. Development of the mining project will involve the upgrade of the existing road and the relevant infrastructure on the site. There was no evidence to suggest that an acceptable level of development and utilisation of the mineral resource will not be undertaken.

Section 269(4)(d)

[67] Mr Wallace gave evidence that the area and shape of the proposed application area was adopted to cover all of the resource identified by reference to the visible surface mineral outcropping, aerial photography, advice from a geologist, information from his original co-applicant and a desk top survey. There is nothing in the evidence to indicate that the size and shape is not appropriate.

Section 269(4)(e)

[68] The primary reason advanced for the application for a term of 50 years related to the size of the resource. Mr Wallace made reference to his experience, the scale of mining proposed and the conditions to be complied with under the environmental authority as well as the expected production and demand levels for the target minerals.

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12 [2002] 1 Qd.R. 347.
13 MRA, s. 260(1).

[69] In my view there is insufficient evidence to support the grant of mining lease for such a lengthy term. I propose a shorter term of lease taking into account that the applicant can apply for a lease renewal at the appropriate time. To some extent the adoption of a lease period is a matter of judgment, however I would think that a lease term of 21 years would provide sufficient security to a mining lease holder to allow him to commit the planning, capital and energy sufficient to develop the resource whilst at the same time limiting the encumbrance on the owner's land.

Section 269(4)(f)

[70] Having regard to the evidence concerning Mr Wallace's experience and to the financial statement made in support of the application, it is clear that sufficient assets can be brought to bear on the mineral resource available to utilise Mr Wallace's technical capabilities to undertake the mining project envisaged by him.

Section 269(4)(g)

[71] There was no evidence to indicate that the past performance of Mr Wallace in mining or associated matters has not been satisfactory.

Section 269(4)(h)

[72] The applicant held a prospecting permit at the time of marking out the proposed lease area there being no other permit or licence holder at the time the application was made.

Section 269(4)(i)

[73] The relevant land is used for grazing. There was no evidence to indicate to me that the use of the land in the manner proposed by the applicant would not constitute sound land use management.

Section 269(4)(j)

[74] The applicant is required by the Draft Environmental Authority which has issued to comply with the environmental conditions contained in the Code of Environmental Compliance for Mining Lease Projects. There was no evidence to suggest that any environmental impacts will not be adequately dealt with by compliance with the conditions of the Code.

Section 269(4)(k)

[75] The Tablelands Council has no objection to the grant of the mining lease and there was no other evidence to indicate a prejudice to the public right and interest.

Section 269(4)(l)

[76] I have dealt with the various grounds of objection above and have concluded that whilst it may be perfectly reasonable for a landowner to prefer not to have a mining lease on his land that a case has not been made out for refusal of the application.

Section 269(4)(m)

[77] On the evidence that I heard the proposed project of mining is appropriate land use which will make use of the mineral resources on the land.

[78] Some processing and bagging of the extracted material is intended to be undertaken on a site in Mareeba other than the area over which this mining lease application has been made. Mr Houen referred me to *Gonzo Holdings v McKie*[14] in support of the objectors view that, absent some official approval of the processing on the Mareeba land, the application for the mining lease could not be granted. In *Gonzo* all of the Members of the Court of Appeal proceeded on the basis that the extraction from the relevant mining lease area a rock bearing gold or to be processed in some limited way on land not subject to a mining lease was mining. I cannot see how reference to that case assists the objector. Indeed, it seems to me to be in support of the applicant's case. Whilst it may be the case that the current intentions of the applicant with respect to his project cannot fully be met until appropriate permission is granted for the Mareeba end of the operation, the absence of such an approval or approvals at this stage does not militate against a recommendation concerning the current mining lease application.

[79] The Objection to the Environmental Authority Application and to the Amended Draft Environment Authority are not sustained and I recommend to the Honourable the Minister for Mines and Energy accordingly.

[80] I recommend to the Honourable the Minister for Mines and Energy that ML 20415 be granted over the application area for a term of 21 years.

RP SCOTT
MEMBER OF THE LAND COURT

[14] [1995] QCA 304.