

LAND COURT OF QUEENSLAND

CITATION: *Re Kelly* [2009] QLC 0139

PARTIES: **In the matter of Application for Mining Lease No 20404 by Gilbert William Kelly**

FILE NO: MRA399-09

PROCEEDING: Application for mining lease

DELIVERED ON: 23 September 2009

DELIVERED AT: Brisbane

MEMBER: Mr BR O'Connor, Judicial Registrar

ORDER/S: **1. Hearing dispensed with.**
2. I recommend to the Honourable the Minister for Mines and Energy that Mining Lease No. 20404 be granted over the whole of the application area for a term of 15 years.

CATCHWORDS: MINING – MINING LEASE – RECOMMENDATION
Mineral Resources Act 1989 ss 245, 269(4), 270(1)

APPEARANCES: Not applicable – Heard on the Papers

[1] **O'CONNOR JR:** This is an application by Gilbert William Kelly under s.245 of the *Mineral Resources Act 1989* ("the Act") for a mining lease over land as described in the application 81 km west of Mt Carbine for the purpose of mining for gold, silver, and the establishment of dams, treatment site, living quarters and water supply for a term of 15 years. The application was lodged at the office of the Mining Registrar at Mareeba on 4 September 2003. No objection was lodged before the closing date for objections which was 28 August 2009.

Request to dispense with a hearing - Section 270

[2] I may dispense with a hearing if satisfied as to matters specified in s.270(1). For reasons that follow at paragraph [4], I am satisfied that the provisions of part 7 of the Act have been complied with in respect of the application. The material supplied by the applicant and the Mining Registrar addresses each of the criteria that I must consider in making my recommendation on this application. I am satisfied that there is sufficient information before me to properly consider this matter. The applicant

has requested that the matter be dealt with on the papers by a member sitting alone. Accordingly, I order that a hearing of this application be dispensed with.

Section 269(4) criteria

- [3] In taking account of and considering the criteria specified in s.269(4), I have relied upon the Additional Information and Statutory Declaration sworn by the applicant. I have also relied upon the other material lodged by the applicant with the Department of Mines and Energy and provided by the Mining Registrar to this Court and the Mining Registrar's Report in relation to this application. These reasons refer to the salient points, but not to all the relevant evidence, that I have taken into account in making my recommendation.

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

- [4] A Certificate of Application was issued by the Registrar on 24 July 2009 which can only be done if the Registrar is satisfied that the applicant is eligible to apply for the mining lease and has complied with the requirements of the Act for an application under s.245 with respect to marking out, notification, service and posting of documents.

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

- [5] The application seeks the grant of a mining lease for the principal purpose of mining for gold and silver. These minerals have been produced from this area in the past. The area is generally known for the production of these minerals and I am satisfied that the area is generally mineralised.

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

- [6] The applicant proposes to mine the area with machinery and a mobile plant which is common practice in this area. There is no evidence to suggest that there will not be an acceptable level of development and utilisation of the mineral resource in the area.

Section 269(4)(d) – Is the land and the surface area of that land in respect of which the mining lease is sought of an appropriate size and shape?

[7] The boundaries of the lease have been determined by the area of potential mineralisation. The applicant has sought a mining lease over the whole of the surface area. There is no evidence to indicate the size and shape is not appropriate.

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

[8] The applicant seeks a term of 15 years. There is no evidence to suggest that a 21 year term is inappropriate. The applicant has the option of surrender if mining and rehabilitation is completed before the term expires.

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

[9] The applicant has sufficient assets, including the mining equipment required, to undertake the proposed operation. I am satisfied the applicant has or has access to the necessary financial and technical resources.

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

[10] There is no evidence to suggest that the past performance of the applicant has not been satisfactory.

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

[11] There are no other holders or applicants for exploration tenures who would be affected by the grant.

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

[12] The current land use is low intensity grazing.

Section 269(4) (j) – Will there be any adverse environmental impacts, and if so, the extent thereof?

[13] The draft environmental authority was issued. It requires the applicant to comply with the standard environmental conditions contained in the Code of Environmental Compliance for Mining Lease Projects.

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

[14] There is no public infrastructure on the area applied for. There was no evidence before me that indicated public right and interest would be prejudiced.

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

[15] There was no evidence before me that indicated any grounds which would justify a refusal of the application.

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

[16] On the basis of the evidence considered in relation to criteria (i), (j), (k) and (l), I consider the proposed activity is an appropriate land use.

Recommendation

[17] Taking into account all the evidence before me and, in particular, that evidence referred to above, I recommend to the Honourable the Minister for Mines and Energy that the Mining Lease be granted over the whole of the application area for the purpose and term sought by the applicant.

**BR O’CONNOR
JUDICIAL REGISTRAR**