

JURISDICTION : MINING WARDEN

LOCATION : PERTH

CITATION : QUARRY PARK PTY LTD V K PLUS S SALT
AUSTRALIA PTY LTD [2020] WAMW 5

CORAM : WARDEN J O’SULLIVAN

HEARD : On the papers

DELIVERED : 28 February 2020

FILE NO/S : Interlocutory Application 656721 and Objection 547122

TENEMENT NO/S : Application for Miscellaneous Licence 08/0171

BETWEEN : **QUARRY PARK PTY LTD**
(Applicant)

AND

K PLUS S SALT AUSTRALIA PTY LTD
(Objector)

Catchwords: *Interlocutory Application; miscellaneous licence; adequacy of application; prescribed purpose; application accompanied by a map.*

Legislation:

- *Mining Act 1978* (WA) ss 58, 91
- *Mining Regulations 1981* (WA) regs 37, 42B

Result:

Application dismissed

Representation:

Counsel:

Applicant : No Appearance
Objector : No Appearance

Solicitors:

Applicant : In person
Objector : Mining Access Legal

Cases referred to:

- *Apache Northwest Pty Ltd v Pel Iron Ore* [2009] WAMW 2
- *Forrest & Forrest Pty Ltd v Wilson* (2017) 262 CLR 510
- *Yarri & Ors v Forrest & Forrest Pty Ltd* [2014] WAMW 6

Introduction

- 1 K Plus S Salt Australia Pty Ltd, as an underlying tenement holder, is one of a number of objectors to an application for a miscellaneous licence (L08/0171) lodged by Quarry Park Pty Ltd.
- 2 K Plus has lodged an interlocutory application seeking to have L08/0171 dismissed on the basis it is non-compliant with the *Mining Act 1978* (WA) and the *Mining Regulations 1981* (WA) on the basis that the application:
 - (a) failed to disclose the purpose for which the licence is sought; and
 - (b) is not accompanied by a map.

The Purpose

- 3 K Plus rely on s 91(6) of the *Mining Act* which provides:

“A miscellaneous licence shall not be granted unless the purpose for which it is granted is directly connected with mining”

- 4 The purposes for which a miscellaneous licence can be granted are prescribed in reg 42B.

- 5 Regulation 64 deals with applications for mining tenements. Sub-regulation (1) provides:

“(1) Application for a mining tenement shall be in the form of Form 21 and lodged within 10 days of marking out.”

- 6 K Plus says that the application (Form 21) lodged by Quarry Park does not specify a purpose, hence the application is non-compliant.

- 7 Notably the Form 21 does not include a field or instruction requiring that the purpose be included.

- 8 Of particular significance to the argument advanced by K Plus are subregs 37(2) and (3) which provide:

- “(2) *The applicant for a miscellaneous licence shall comply with the regulations in Part V relating to applications and in addition to giving notice of the application as required under the Act and these regulations, shall also cause copies to be given to each applicant for or holder of any mining tenement comprising any portion of the land the subject of the application.*
- (3) *Within 35 days of the date of application for a miscellaneous licence, the applicant shall lodge written details of—*
- (a) *any works to be constructed in connection with the licence; and*
 - (b) *the proposed manner of construction of such works; and*
 - (c) *any operations to be carried out on the land the subject of the application.”*

9 In my view, the information sought by reg 37(3) is clearly directed to elucidating, among other things, the purpose for which the licence is sought. It also readily explains why there is no requirement that the application specify the purpose for which the application is sought.

10 It was on this basis that Warden Wilson in *Yarri & Ors v Forrest & Forrest Pty Ltd*¹ held that an application for a miscellaneous licence that did not state the purpose for which it was sought is not a nullity:

“In my opinion, there is no statutory obligation, pursuant to s. 91(1) of the Act or within the Regulations, including Part V of the Regulations, or within the Form 21 Application for Mining Tenement for an applicant for a Miscellaneous Licence to state the purpose or purposes of the application. Whether the application for a Miscellaneous Licence can be granted is not, in my opinion, dependent upon the categorisation by the applicant of its stated purpose pursuant to r. 42B of the Regulations, but is determined by the Warden or the Mining Registrar after consideration of the content of the r. 37(3) of the Regulations Statement to determine whether what is proposed by the applicant falls within the provisions of r.42B of the Regulations and whether that purpose is directly connected with mining operations pursuant to s. 91(6) of the Act.

The assessment and determination of those factors to satisfy the application for a miscellaneous licence is for one or more of the prescribed purposes are a matter for the Mining Registrar and the Warden aided by the powers

¹ *Yarri & Ors v Forrest & Forrest Pty Ltd* [2014] WAMW 6; [107]-[108]

to request further information from the applicant pursuant to s. 42(3) of the Act.”

11 In its submissions in response dated 2 August 2019, K Plus point out that subsequent to Warden Wilson’s decision in *Yarri*, the High Court handed down *Forrest & Forrest Pty Ltd v Wilson*². Particular reliance is placed by K Plus on the statement by the High Court³ that when a statute providing for the disposition of interests in resources of a State prescribes a mode of exercise of the statutory power, that mode must be followed and observed.

12 In my view, *Forrest & Forrest* has no application to the circumstances of this case for two reasons.

13 First, in *Forrest & Forrest* the High Court did not examine whether an application for a miscellaneous licence must include the purpose for which it is sought.

14 Second, when s 91(6) and regs 37(3) and 64(1) are read together, there is no reason to believe that the mode of exercise of statutory power set down by the legislation has not been followed and observed. As I have already pointed out there is no requirement that an application for a miscellaneous licence state the purpose for which it is sought.

15 For these reasons the first ground has not been made out.

The Map

16 K Plus argues that Quarry Park’s application is deficient because it was not accompanied by a map as required by s 93(2) of the *Mining Act*.

17 K Plus relies on the affidavit of Claire Margaret Riessen, sworn 25 June 2019, which includes a copy of the application for L08/0171 as served on K Plus which is not accompanied by a map.

² *Forrest & Forrest Pty Ltd v Wilson* (2017) 262 CLR 510

³ *Ibid*; [64]

18 On the assumption K Plus were served with the same documents that Quarry Park lodged with the Department⁴, K Plus deduced that the application (at the time of lodgement) was not accompanied by a map and is therefore not compliant with s 93.

19 Quarry Park assert that the application was accompanied by a map⁵ but that the legislation requires that only the application be served on interested parties. This explains why K Plus did not receive a copy of the map.

20 Section 91(9) of the *Mining Act* provides:

“Before an application for a miscellaneous licence is determined a copy of the application shall, within the prescribed time, be given to the local government and to such other persons as may be prescribed.”

21 As matters stand the evidence does not establish that Quarry Park’s application was not accompanied by a map when it was lodged. Nor is there any requirement that the map accompanying the application be served on a prescribed person.

22 Any suggestion that the failure to serve K Plus with a copy of the map renders the application non-compliant (although this was not its case) was dealt with by Warden Calder in *Apache Northwest Pty Ltd v Pel Iron Ore*.⁶

“I am of the opinion that although the direction contained in Note 2 to the prescribed Form 21 requires that in respect of an application for a miscellaneous licence the application is to be accompanied by a map that clearly delineates the boundaries of the ground applied for, nevertheless, the application itself is entirely constituted by the completed Form 21 alone and not by the Form 21 together with the accompanying map. That the Form 21 application for mining tenement is not constituted by both the Form 21 and the accompanying map is consistent with the reference in each of para (c) of subs 41(1), subs 93(2), s 118 and para 37(1)(b) of the Regulations to an application being “accompanied” by the requisite map. If it were the case that the application for a mining tenement was constituted by the completed Form 21 and a map delineating the boundaries of the ground applied for there would be no need for there to be included in any of those provisions of the legislation that I have just mentioned, the express reference to the application being accompanied by the map.

⁴ Department of Mines, Industry Regulation and Safety

⁵ A search of the Department’s register confirms this to be the case

⁶ *Apache Northwest Pty Ltd v Pel Iron Ore* [2009] WAMW 2; [38]

Subsection 74(4) of the Act says that an application for the grant of a mining lease is to be accompanied by the same type of map. In the case of an application for an exploration licence, s 58, which provides for the making of an application for an exploration licence, contains no express requirement that the application is to be accompanied by such a map. Subsection 58(2) requires the application to identify the graticular blocks applied for and, further, the prescribed Form 21 application for a mining tenement expressly excepts exploration licence applications from the requirement of accompaniment by a map on which the boundaries of the ground applied for are clearly delineated. The prescribed Form 21, in the marginal note under the heading "DESCRIPTION OF GROUND APPLIED FOR", for exploration licences, says: 'see Note 1. Note 1, which is headed "EXPLORATION LICENCES", says: "Attachments 1 and 2 form part of every application for an exploration licence ... '. There is no such note in respect of any other type of tenement application."

23 His Honour goes on to observe that:

*"... when the holder of an underlying mining tenement or the applicant for an underlying tenement is given a copy of the application pursuant to subreg 37(2) there is no requirement that the applicant for the miscellaneous licence also give to the applicant for or the holder of any underlying mining tenement a copy of a map on which the boundaries of the area applied for are clearly delineated."*⁷

24 Warden Calder's observations need to be considered in a context where the Form 21 requires that the following information be included:

- (h) locality;
- (i) datum peg;
- (j) boundaries; and
- (k) area

25 Regulation 66 is of particular importance::

"66. Description of boundaries

The boundaries of every mining tenement applied for, other than an exploration licence, shall be described from either —

- (a) an existing survey mark; or*
- (b) a prominent ground feature shown on the public plans of the Department; or*

⁷ Ibid; [39]

(c) *latitude and longitude; or*

(d) *Map Grid of Australia 1994 coordinates.*”

26 The requirement to include one or other of the descriptors in reg 66 enables any person reading the Form 21 to identify the location to which the application relates notwithstanding that a map is not provided.

27 This information is also made available by the Department⁸ on the register. Regulation 84C(a)(i) requires that:

“The register is to contain the following particulars –

(a) *In relation to a mining tenement –*

(i) *The particulars shown on the prescribed form of application;
...”*

Conclusion

28 As neither of the grounds advanced by K Plus has been made out, the application is dismissed.



Warden J O’Sullivan

28 February 2020

⁸ Department of Mines, Industry Regulation and Safety