Dear Sir

RE: Application for Mining Lease 26/58 by N. R. McAllister -
Objections 5 & 12/84 by F. E. Regan & D. P. McVittie.

The two objections to this application were withdrawn and I recommend the granting of the application for a Mining Lease by Mr. McAllister but make the following points.

It is clear from the evidence that there are roads on the ground the subject of the application. Such being the case it is suggested that if you grant the application then a condition be made that no roadway be interfered with and that if any damage is caused to a roadway by the holder or his agents or workmen, that such damage is made good by and at the expense of the holder.

There is also reference to part of the ground encroaching on the townsite and the existence of some houses. There is no evidence of compliance with section 33 (1) of the Mining Act 1978-1981 as amended ("the New Act"). Even so, it is still open for you to grant the mining lease having regard to section 75 (4)(b) of the New Act. If you were minded to grant the mining lease then it is also suggested that it be conditional that mining be carried out at a depth of not less than 30 metres from the lowest part of the surface of any private land and that there be proper access to and from any private land as provided in section 29 (7) of the New Act.

It has been previously argued that you have no power to grant a mining lease in respect of a prospecting area that was not in existence immediately before the commencement date (1.1.82) (i.e. where there was only an application for a prospecting area pending immediately before the commencement date and not one actually in existence at such time.)

It seems that this argument has been based on Transitional Provisions Sub-Clauses 9(1), 9(2) and 9(3) which in effect clearly enable the holder of a prospecting area in existence immediately before the commencement date to apply for a mining lease under the New Act.
Regulation 5 of the Old Regulations and further and in particular Regulation 9 of the Old Regulations in effect provided that the twelve month life of a prospecting area commenced from the date of registration. In further support of the argument that you had no such power it has been previously submitted that a prospecting area granted after the commencement date pursuant to an application that was pending on the commencement date comes into existence when registered (which would of course occur after the commencement date) and could not be said to have existed as at the date of application (which would have been before the commencement date).

In conclusion of such argument it was stated that because the applicant for a prospecting area pending on the commencement date, did not become a holder of a prospecting area until after the application was granted and registration took place, Sub-Clause 9(2) of the Transitional Provisions did not apply and such holder had no right to apply for a mining lease.

I agree with points made in support of the argument but not the conclusion, because to draw such conclusion completely ignores Clause 8 of the Transitional Provisions and in particular Sub-Clause 8(1) and Sub-Clause 8(3)(b). This Clause relates to applications for mining tenements under the Mining Act 1904 as amended ("the Repealed Act") pending on the commencing date and Sub-Clause 8(3)(b) provides that the holder of a mining tenement granted pursuant to Sub-Clause 8(1) may within a certain time period "apply for a mining tenement of the kind for which he would have been entitled to apply had the first mentioned mining tenement (in this case the prospecting area) been granted under the Repealed Act".

Regulation 55(15) of the Old Regulations entitled the holder of a prospecting area to apply for a gold mining lease. Transitional provisions, sub-clause 9(2) and sub-clause 2(1) clearly relate a gold mining lease pursuant to the Old Regulations to a mining lease pursuant to the New Act and regulations. I, therefore conclude that the holder of a prospecting area granted pursuant to Sub-Clause 8(1) may apply for a mining lease because this is a tenement of the kind for which he would have been entitled to apply as provided in Sub-Clause 8(3) of the Transitional Provisions.

It is my view that the Transitional Provisions provide you with power to grant a mining lease in respect of a prospecting area which was in existence immediately before the commencement date (Clause 9(2); ) and in respect of a prospecting area which was granted and registered further to an application which was pending on the commencement date.

I am of the view that you have power to grant a mining lease in this particular case should you so desire.
Yours faithfully

[Signature]

DENIS REYNOLDS
KALGOORLIE WARDEN.