

JURISDICTION : MINING WARDEN

LOCATION : PERTH

CORAM : Warden K. Tavener

HEARD : 24th and 25th March 2014

DELIVERED : 24th April 2014

BETWEEN : **BUCKLAND MINERALS TRANSPORT PTY LTD**
Applicant

and

MINEROLOGY PTY LTD
Objector

Application for a miscellaneous licences L08/104 and L08/105.
Objections KR 172/123 & KR176/123

Catchwords:

Application for miscellaneous licences – Objections - State Agreements – Road

Legislation:

Mining Act 1978

Result:

Miscellaneous Licences L08/104 and L08/105 are granted with the condition that Buckland is responsible for all road safety requirements.

Representation:

Counsel:

Applicant : Mr T. Kavenagh
Objector : Mr M. Dunham

Solicitors:

Applicant : Hunt & Humphry
Objector : Mineralogy Pty Ltd

Case(s) referred to in judgment(s):

Onslow Resources v Avery [2011] WAMW 4
Ward v Western Australia (2002) 213 CLR

Case(s) also cited:

BHPB Minerals Pty Ltd v Martu Idja Banyjima [2009] WAMW 6
Mineralogy Pty Ltd v State of Western Australia [2004] WASC 275
Onslow Resources v Avery [2011] WAMW 4

1. On the 21 November 2011 Buckland Minerals Transport Pty Ltd applied for miscellaneous licences L08/104 and L08/105. On the 19th December 2013, Mineralogy Pty Ltd objected to those applications.
2. Buckland is a wholly owned subsidiary of Iron Ore Holdings Pty Ltd (IOH) which is developing an iron mine at Bungaroo South. IOH intends to transport iron ore from Bungaroo South to Cape Preston. The licence application is to facilitate a haul road from the mine to the port. The road has two sections; the first section, which has been approved, connects the mine to the North West Coastal Highway. The second section involves building a road northwest of the highway, on land subject to the applications.
3. The Main Roads Department has allowed the NWC highway to be used from the intersection with the first section to the port, for two years. The Applicant utilises 115 tonne payload trucks, which have an adverse impact on the highway and its traffic. After the two year period, the applicant requires an alternative route, the second section for its ore transportation needs.

Particulars of Objections

4. The subject land is covered by exploration licences 08/1331 and 08/1451, miscellaneous licence 08/20, general purpose leases 08/63 and 08/74 and other licences not affected by the applications.
5. The subject land also falls under the Iron Ore Processing (Mineralogy Pty Ltd) Agreement 2002 (WA).

Law

Section 91, of the *Mining Act 1978* states:

(1) Subject to this Act.....the warden, in accordance with section 42 (as read with section 92), may, on the application of any person, grant in respect of any land a licence, to be known as a miscellaneous licence, for any one or more of the purposes prescribed.

(6) A miscellaneous licence shall not be granted unless the purpose for which it is granted is directly connected with mining.

(7) Sections 18, 23 and 27 do not prevent a miscellaneous licence from being applied for or granted in respect of land that is the subject of another mining tenement.

6. The purposes are prescribed by regulation 42B of the Mining Regulations. The warden may impose such terms and conditions area which are appropriate to the licence.

Applicant's Witnesses

7. Jeremy John Peters who is a chartered geologist and mining engineer with particular experience in iron particular ore. Peters considered whether there were any economic potential beneath the proposed transport corridor.
8. Peters commented on a magnetic imaging map prepared by Christopher Spielvogel and said the word 'ore', on the map, had been used in a misleading manner, by reference to the JORC Code. Peters disputed the implication the map was indicative of magnetite or magnetic banded iron formations.
9. Mineralogy's geologist, Christopher Speilvogel, has relied upon BHP reports prepared in 1981. Peters noted the Speilvogel report had incorrectly positioned a line tracking the bore holes; the particular line should have been recorded 2000 metres to the northwest. Further, a bore hole, no 9, had been incorrectly transposed as bore hole no. 19. That is, the map prepared by Mr Spielberger shows hole 9 occurring on line CC, well to the north and lying beneath the application.
10. The correct assessment of hole 9 was for little indication of magnetite. Hole 19, which is over the application, was barren for magnetite or economic mineralization. In short form, in Speilvogel's map, hole C9 should be C19, which is barren. The C-line was incorrectly plotted and is further to the north.
11. Peters also disputed Speilvogels' interpretation of BHP's data, taking the view the potential volume of 380 million tonnes of ore, referred to in the Speilvogel report, was an unsubstantiated figure and applied to the entire area covered by the BHP exploration licence. Peters agreed it is poor engineering to site objects on high ground.
12. Brett William Hazelden was the General Manager, Project Development at Iron Ore Holdings. Hazelden spoke about the proposed road and other facilities and, in particular, the transportation corridor which is intended to run next to the Dampier to Bunbury Gas Pipeline, before crossing over the North-West Coastal highway. The road connects the Bungaroo mine to the Cape Preston port; its primary purpose is to transport iron ore.
13. The miscellaneous licences will also contain other structures including communication towers and drains. Hazelden spoke about the nature of the road, its usage and the complex approval

process, including discussions with the Department of State Development.

14. In respect of miscellaneous licence application 08/104, the road is approximately 35 kilometres. It has supporting infrastructure such as burrow pits, communication towers, construction camps, groundwater targets, road bridges and a truck stop. There will be various culverts that underlie the road for drainage purposes and groundwater targets. There are no truck stops on Mineralogy's ground.
15. The road is to be paved to a width of 10 metres; the overall width is about 14 metres at the top level and then, depending on the topography, that will vary. There will be an underpass at the North-west coastal Highway.
16. Mr Peters said, in relation to both applications, the roads and the fibre optics will be on Mineralogy's ground. There is one section that has a potential groundwater target on 08/105. There are to be flood ways on Mineralogy's ground but no construction camps. It was said the width of the road would not interfere with Mineralogy's drilling program.
17. Mr. Peters said the applicant would re-locate the road should the Dampier to Bunbury pipeline be shifted. He confirmed that the current applications did not impact on Mineralogy's approved projects; any bunds required to be built would have to be a minimum distance from the North-east coastal highway and concomitantly, the proposed road and associated infrastructure. It was accepted the road may inhibit the building of future bunds.
18. Christopher Speilvogel was the geology exploration tenements manager at Mineralogy; it was accepted he was a geologist. He said the potential impact of L08/104 was on future water management, by limiting the capacity to build infrastructure above flood levels and to avoid drainage channels. As to L08/105, he said the position was similar to 104 regarding the water storage options and the need retain higher ground.
19. Mr Speilvogel had stated in his report the subject land had an identified ore zone; he agreed it was neither an ore reserve nor a measured mineral resource. He agreed further drilling had to be done.
20. Mr Speilvogel conceded Mineralogy was constrained by its Dampier to Bunbury natural gas pipeline agreement; the agreement included conditions there be no mining or interference with the water management facility within 25 metres of the pipeline. He agreed, with the assistance of the relevant

documents, there was no approval under the State agreement to conduct activities over an area covered by L08/105.

21. He agreed he had incorrectly transposed hole number 9 for hole number 19, on L08/104; underneath was waste and no mining had done, in that area, by Mineralogy or BHP for the last 30 years. He further conceded in plotting his map, some lines of holes were incorrectly plotted.
22. Mr Zhenya Wang is the managing director of Australian Resources Limited; he is not employed by Mineralogy Pty Ltd. The haulage road on the north-western side of the Dampier to Bunbury gas pipeline, it was said, will have an impact on the construction and operation of the facilities that are proposed for tailings, water management, distribution and the reticulation facility because the area is already quite restricted, reducing the quantity that could be stored in the facilities.
23. Mr. Wang agreed that the Ministerial Statement 823 did not approve anything in relation to the area covered by L08105.

Mineralogy's Submissions

24. Mineralogy submitted, from BHP's data, there are zones in the tenement that warrant further investigation and the investigation is already inhibited by the Dampier to Bunbury pipeline, before the introduction of the proposed road.
25. Mr Spielvogel said 104 had the potential to interfere with Mineralogy's exploration licence, 1451; there are prospective ore zones and the miscellaneous licences granted would traverse some of the limited high ground.
26. Mineralogy raised the objection that all Buckland will do is hold the miscellaneous licences for a road. Although a subsidiary of Iron Ore Holdings, which is engaged in mining, it does not mine; an entity cannot have a miscellaneous licence, it was said, solely for the purpose of operating a road unless there is a direct connection with mining. It could, potentially, be sold to a company with no connection to mining.
27. Mr Wang suggested the footprint of facilities would need to be reduced to allow for the haul road layers and thereby impact on environmental approval plan. Mineralogy objected to the road on the basis it will put another restriction on an already restricted area.

28. In *Ward v Western Australia*¹ the High Court held the holder of the general purpose lease had exclusive rights to the occupation of the surface for mining purposes. Mineralogy submitted it was entitled to exclusive possession of G0863 for mining purposes, or purposes connected with mining.
29. The issue of State agreements was a live matter as under section 30(2) of the State Agreement the State may not grant a road, right of way or easement of any kind over tenements, or the land referred to in clause 30.1; that land is the subject of the State Agreement. The applicant submitted a miscellaneous licence is not a road, a right of way, or an easement. State Agreements do not permit actions or grants which create a prejudice that is inappropriate or unsuitable. However, the existence of a State Agreement does not preclude the activities of third parties, who are required to reach an agreement with the Department of State Development.
30. Mineralogy contested the proposition, submitted by the applicant, that because the Dampier to Bunbury gas pipeline already exists, then the grant of the application will not further hinder the objector. Mineralogy argued the pipeline creates sensitivities and further tenements would exacerbate the existing situation.

Buckland's Submissions

31. In relation to section 91(6) of the Mining Act, the Act does not require the holder of a miscellaneous licence to also be the holder of a tenement. The requirement is the miscellaneous licence must be connected with mining. Here, to build a road from a mining operation to a port.
32. The tenure granted under a State Agreement is a miscellaneous licence, still, under the Mining Act; the terms of the exploration licence, or that exploration licence, are modified by the State Agreement such that there are no expenditure conditions. Under section 9(5) of the State Agreement, the exploration licences granted are held under and subject to the Mining Act, including the ability of the Warden to grant a miscellaneous licence over an exploration licence.
33. State Agreements prevent the grant of any road, right of way or easement however a grant of a miscellaneous licence is not the grant of a road. It is a grant of tenure which permits the construction of a road. A road is usually dedicated under the Land Administration Act and then the land subject to the road is re-vested in the crown. A miscellaneous licence does not fall

¹ (2002) 213 CLR

within the definition of the road. Similarly, a miscellaneous licence is not a grant of a right of way because it is, usually, granted as an easement.

34. Clause 30(2) of the Mineralogy State Agreement says the grant of any road, right of way or easement cannot be granted which may unduly prejudice or interfere with the project proponent's activities under the agreement. There can be a grant of a road, a right of way or an easement if there is no undue prejudice or interference.
35. It was submitted there are no current activities under this State Agreement, nor can there be until there has been an approval under the State Agreement. As there have been no approvals under the Agreement the issue falls away. That is, as the objector is not currently conducting any activities on the land and does not have any approval under the State Agreement, clause 30 does not, as a matter of law, prohibit the grant of the licence application.
36. I agree there is no basis for a claim of public interest in this matter, as outlined below.
37. The remaining question is whether the licence prevents, hinders or obstructs the objector from exercising its rights to explore for minerals and related activities. If there was such interference the issue is whether conditions can be framed which satisfactorily resolve any likely interference or incapability; if no conditions meet those requirements, then a warden can dismiss the application.
38. In relation to expiration licence 081451 the question is will there be interference with a magnum type deposit. Mr Peters, it was submitted, incorrectly drew line CC on the map, so that it went across L08/104; I agree with that submission.
39. There are no drill holes on L08/104 which suggest any magnetite, such that would cause any interference. Even if hole MW19 is on L08/104, which I do not find, it is a waste deposit of dolerite. Such a finding is consistent with Mr Peters' evidence that the magnetic feature is the cherty-banded iron formation.
40. In relation to exploration licence 08/1451, I find there would be no interference.
41. As to exploration licence 08/1331, there was no evidence of any exploration having been conducted on this exploration licence or plans to conduct any exploration. Consequently I find the grant of L08/105 will not interfere with exploration licence 08/1331.

42. In relation to general purpose lease 08/63, Mr Spielvogel said, other than a few tracks, nothing been constructed on that lease. Mr Wang agreed the reference to Ministerial Statement 823 was irrelevant to the proceedings. There is no evidence of any approved activities, either under the State Agreement, the Mining Act or the Environmental Protection Act.
43. The evidence showed the objector's waste storage facility is already bisected by the pipeline, so there will be no additional interference by a parallel road; certainly not, I find, to the level of being undue prejudice or interference. As to the application for general purpose lease 08/55, no rights are affected nor were it suggested how the lease would be affected. Likewise, little evidence was produced in respect of miscellaneous licence 08/20, with the applicant's road crossing the objector's road and pipeline. Buckland agreed to a condition being imposed such that there would be stop signs on its road, so there would be little interference.
44. In relation to general purpose lease 08/74 there was no evidence adduced by the objector.

Findings

45. The objector did not contest the marking out and compliance with the formal requirement. Section 91(6) Mining Act does not require the entity to be the holder of a mining operation; section 91(6) does require that the miscellaneous licence is directly related to mining.² Here, the application is to facilitate the building of a road to haul iron ore from a mine to a port, so as avoid the use of a public highway. It is clearly related to mining.
46. A State Agreement is a contract, to which the usual principles which govern the proper construction apply.³ The applicant has had discussion with the Department of State Development, however the existence of such an agreement does not prevent the granting of a miscellaneous licence to a third party. If a miscellaneous licence was granted over a tenement subject to a State Agreement, the holder is required to reach agreement with the Department of State Development. In that way the public interest, in maintaining the integrity of such agreements, would be protected.

² Onslow Resources v Avery [2011] WAMW 4; see also BHPB Minerals Pty Ltd v Martu Idja Banyjima [2009] WAMW 6

³ Mineralogy Pty Ltd v State of Western Australia [2004] WASC 275

47. Mineralogy objected to the grant of L08/104 and L08/105 as it would unduly prejudice or interfere with it exercising its activities and adversely affect its rights, rather than on the basis of injurious affection. For the reason given, its activities and rights are not adversely affected to an undue degree. The Applicant must minimise any impacts with the Objectors' tenements, especially in regard to road cross-overs.

Decision

48. The Applicant is seeking two miscellaneous licences to facilitate the building of a road so as to divert heavy haulage trucks from a public highway, for the purpose of mining. The proposed road is to be built next to a state pipeline, which has its own buffer zone, such that any deleterious impact on the Objector's activities or rights is not unduly increased by the presence of the proposed road.
49. Miscellaneous Licences L08/104 and L08/105 are granted with the condition that Buckland is responsible for all road safety requirements. Further, grant is to occur after clearance from native title processes.