

CITATION: *Territory Iron Pty Ltd v Ban Ban Springs Station Pty Ltd* [2006] NTMC 090

PARTIES: TERRITORY IRON PTY LTD
v
BAN BAN SPRINGS STATION PTY LTD

TITLE OF COURT: Wardens Court

JURISDICTION: Mining Act

FILE NO(s): 20625911 (ML25087)

DELIVERED ON: 21 November 2006 by post to the parties' solicitors

DELIVERED AT: Darwin

HEARING DATE(s): 2, 10 and 20 November 2006

JUDGMENT OF: Mr V M Luppino, Warden

CATCHWORDS:

Mining – Application for mineral lease.

Mining Act NT, ss 55, 57, 58, 59, 66(g), 162,163, 166(1)(c), 179, 184

REPRESENTATION:

Counsel:

Applicant: Mr Stewart
Objector: Not represented

Solicitors:

Applicant: Ward Keller
Objector: Minter Ellison

Judgment category classification: C
Judgment ID number: [2006] NTMC 090
Number of paragraphs: 16

IN THE WARDENS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20625911

BETWEEN:

TERRITORY IRON PTY LTD
Applicant

AND:

**BAN BAN SPRINGS STATION PTY
LTD**
Objector

REASONS FOR DECISION AND REPORT TO THE MINISTER FOR
MINES AND ENERGY

(Delivered 21 November 2006)

Mr VM LUPPINO SM:

1. This matter came before me consequent upon the lodgement of an objection to an application by Territory Iron Pty Ltd for a mineral lease number 25087. The objection was filed by the proprietor of the pastoral lease on which the proposed mine is sited. The objector withdrew its objections shortly before the hearing. By reason of section 58(8) and 59 of the Mining Act ("the Act"), I am required to conduct a hearing and make a recommendation to the Minister notwithstanding the withdrawal of the objections.
2. The relevant provisions of the Act are set out hereunder namely :
 55. Form of application for mineral lease

In addition to the requirements of section 140D (if applicable) and section 162, an application for a mineral lease –

- (a) shall be lodged with the Department;
- (b) shall include a description of the land to which the application relates;
- (c) shall indicate the mineral or minerals proposed to be mined on the proposed lease area, or the associated purpose for which the lease is sought;
- (d) shall state the percentages into which the proposed lease is to be divided;
- (e) shall state the name by which it is proposed the lease shall be known;
- (f) shall be accompanied by particulars of –
 - (i) the technical qualifications of the applicant and his employees who will be associated with the initial mining development on the lease area;
 - (ii) the technical advice available to the applicant;
 - (iii) the financial resources of the applicant;
 - (iv) the applicant's proposals for developing the mineral deposits on the proposed lease area, or the alternative use proposed for the land in conjunction with the mining of minerals, as the case may be; and
- (g) – (h) [Omitted]
- (j) shall state the names and addresses of the owners and occupiers of land that will be, or is likely to be, affected by the grant of the proposed lease.

57. Notice of application

- (1) Where an application for a mineral lease is lodged –
 - (a) within 14 days after lodgement or the further time allowed in writing by the mining registrar, the applicant must serve written notice of the making of the application on the persons specified in the list referred to in section 55(j); and

(b) if Part XIA or XIB applies – the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be served with notice of the application in accordance with that Part.

(2) In addition to subsection (1), the mining registrar may, by written notice, require an applicant for a mineral lease to serve written notice of the making of the application on such persons, and within such time, as the mining registrar thinks fit and specifies in the notice.

(3) Within 14 days, or such further time as the mining registrar allows, after the notice referred to in subsection (1) or (2) is served, the applicant for the mineral lease shall provide to the mining registrar such evidence of the notice having been served and the method by which the service was effected as the mining registrar may require.

58. Hearing of application

(1) As soon as practicable after the period provided in Part XIII for the answering by an applicant of objections under that Part against his application for the grant to him of a mineral lease, the mining registrar shall fix a date for consideration by a warden of the application and the hearing in open court of objections to the proposed grant.

(2) The hearing referred to in subsection (1) shall be held in the warden's court for the part of the Territory in which the proposed mineral lease is situated, or such other warden's court as the mining registrar, with the consent of the applicant, determines.

(3) At a hearing referred to in subsection (1), the warden shall take such evidence, shall hear such persons and inform himself in such manner, as he considers appropriate in order to determine the relative merits of the application and objections and, subject to this Act, shall determine his own procedures in connection with the hearing.

(4) The applicant and all persons lodging objections in accordance with Part XIII shall be advised of, and may be heard at, a hearing referred to in subsection (1) and may be represented by counsel.

(5)-(7) Omitted.

(8) Where there are no objections lodged under Part XIII to an application for the grant of a mineral lease, the warden may dispense with the hearing referred to in subsection (1).

59. Warden's recommendation to Minister

As soon as practicable after the completion of a hearing referred to in section 58(1) or where, under section 58(8) he is not required to hold a hearing, as soon as practicable after he has considered the matters before him under that section, the warden shall transmit to the Minister all documents and notices of objection considered by him, together with such notes of evidence and plans and other documents and studies prepared for or in connection with the hearing, and his report recommending the grant or refusal of the mineral lease.

162. Form of application

(1) An application for the grant of an exploration licence, exploration retention licence or mining tenement –

- (a) shall be in writing;
- (b) shall show an address at which documents required or permitted by this Act to be served on the applicant may be so served;
- (c) [Omitted]
- (d) shall be accompanied by a map that indicates the area of land to which the application relates, including –
 - (i) the boundaries of existing land holdings or geographical features; and
 - (ii) in the case of a mining tenement only – the location of any residences and other buildings in that area of land and any residences and other buildings within 50 metres of that area of land;
- (e) shall state the period for which the licence or tenement, as the case may be, is sought;
- (f) is to be accompanied by the prescribed fee;
- (g) where it is proposed that the licence or mining tenement be granted to 2 or more miners, shall state the proposed percentage of each in the licence or mining tenement; and
- (h) shall be accompanied by an amount of money sufficient to cover the cost of advertising the application.

(2) An applicant for the grant of an exploration licence, exploration retention licence or a mining tenement shall, at the request of the Secretary,

furnish such further information in relation to his application, or such evidence in support thereof, as that person may require.

(3) The Secretary or a mining registrar may allow an applicant such time as he considers reasonable to enable the applicant to obtain information required to be lodged in support of the application, and if the applicant obtains that information and lodges it with that person within the time so allowed, the application shall be treated, and shall be as valid and effective, as though it were lodged in its completed form at the time when it was first lodged.

163. Notice of application

(1) As soon as practicable after an application for the grant of an exploration licence, exploration retention licence or mining tenement (other than a licence or tenement to which Part XIB applies) is received in accordance with the provisions of this Act, the Secretary must cause to be published in a newspaper printed and circulating in the Territory a notice containing –

- (a) the name of the applicant;
- (b) the type of title applied for;
- (c) the registration number, if any, of the application;
- (d) the period in respect of which the exploration licence or mining tenement is sought;
- (e) a description of the land in respect of which the application is made sufficient to enable an interested person to determine its location, or a map that indicates the proposed area by reference to the boundaries of existing land holdings or geographical features;
- (f) a statement to the effect that the owner or occupier of land in respect of which the application is made may, not later than 2 months after the date specified in the notice (being at least 21 days after the application was lodged) lodge in writing with the Department an objection to the grant;
- (fa) if Part XIA applies – a statement to the effect that any registered native title claimants and registered native title bodies corporate in relation to land in respect of which the application is made may, not later than 2 months after the date specified in the notice (being the same date as the date specified in the notice under paragraph (f)) or, in the case of a person to whom subsection (5)

applies, within the further time allowed under that subsection, lodge in writing with the Department an objection to the grant; and

(g) a statement to the effect that any other person may, within 2 months after the date specified in the notice (being the same date as the date specified in the notice under paragraph (f)), lodge in writing with the Department comments on the grant.

(2) Objections and comments may be lodged in response to a notice published under subsection (1) in accordance with the statement referred to in subsection (1)(f), (fa) or (g), as the case requires.

(2A) Where –

(a) the grant of the exploration licence, exploration retention licence or mining tenement is an act of the type referred to in section 140B(1)(a); and

(b) there are no registered native title claimants or registered native title bodies corporate in relation to any of the affected land,

the representative Aboriginal/Torres Strait Islander body in relation to any of that land may, within 2 months after the date of publication of the notice under subsection (1) or within the further time allowed in writing by the Minister, lodge in writing with the Department comments on the grant.

(2B) An objection or comment lodged under subsection (2) or (2A) is to be lodged in duplicate and is to set out the grounds on which it is made.

(2C) Any objections or comments lodged in accordance with this section that do not relate to registered native title rights and interests are to be dealt with in accordance with the procedures relating to objections to the grant of the relevant mining interest.

(2D) If Part XIA applies, subject to subsections (2E) and (2F), any native title objection lodged in accordance with this section by a registered native title claimant or registered native title body corporate is to be dealt with under Part XIA.

(2E)-(2F) Omitted.

(3) As soon as practicable after an objection or comment is lodged in accordance with this section, the Secretary or the principal registrar must advise the applicant for the grant of the relevant mining interest of the

objection or comment and give the applicant a copy of the objection or comment.

(4) An applicant who is advised under subsection (3) of an objection may, within 21 days after receiving the advice, submit to the Secretary, a written answer to the objection or comment.

(5)-(6) Omitted.

3. Section 162 sets out the formal requirements of an application for a mining tenement which, according to the definition in Section 4 of the Act, include a “mineral lease”. Thereafter Section 163 regulates the procedure relevant to notification of the application and the lodgement of management of objections. Sections 55-59 however set out specific provisions dealing with applications for a grant of a mineral lease. Although section 57 contains provisions relating to notification of the application, there are no provisions specific to mineral leases relating to objections. Accordingly the provisions in section 163 apply to such objections.
4. Subject to that, once an objection is lodged the procedure is regulated by section 58 of the Act. This essentially refers the matter to this court “...for consideration by a warden of the application and the hearing in open court of objections to the proposed grant.” Section 58(3) empowers me to take evidence, hear parties and inform myself in such manner as I consider appropriate in order to determine the relative merits of the application and the objection. Likewise I am empowered to determine the procedures to be adopted in connection with the hearing.
5. At the conclusion of the hearing, section 59 of the Act obliges me to report to the Minister and to make a recommendation in relation to the application. The ultimate decision as to the grant of the application rests with the Minister.
6. In terms of the compliance with the formal requirements of the Act, I have been provided with and have considered the file of the Department of

Primary Industry, Fisheries and Mines (“the Department”). This file represents the repository of all official filed documents in relation to the application and the objection. I have also been provided with the Public Environmental Report (“PER”) and the Public Environmental Report Supplement. The former is prepared as an initial step towards securing all necessary environmental approvals. It contains details of the proposed mine, the scope of possible environmental impacts and contains suggestions to avoid or minimise potentially adverse impacts. The latter report addresses comments made during the public consultation process.

7. Absent any objection, from the material provided I am satisfied that there has been compliance with all of the formal requirements of the Act in relation to the application. There does not appear to have ever been any real dispute about that.
8. In terms of the other matters relevant to the consideration of the application, I note that the objection in this matter is evidenced by letter from the objector’s solicitors to the Department dated 18 August 2006. The objector is the holder of the pastoral lease known as Ban Ban Springs Station, an operational cattle property on which the proposed mineral lease is sited. In summary form, the objection:
 1. requests details to assist in proper identification of the area of the mineral lease. I do not consider this to be a valid ground of objection. It is more a request for clarification and more in the nature of further particulars.
 2. alludes to the necessity for appropriate conditions as to compensation, environmental impact, enforceable clean up, rectification and rehabilitation, access and fire prevention.
 3. seeks disclosure of the proposed Mining Management Plan prepared for the purposes of the authorisation pursuant to the Mining

Management Act required to operate the mine. I also regard this as a request for information rather than a valid ground of objection.

9. The applicant responded to the objections by letter dated 13 September 2006. The response addressed the matters raised in the grounds of objection as follows:
 1. Details were provided to better identify the area and siting of the mineral lease. The applicant also pointed out that the PER contained detailed maps and aerial photographs sufficient to enable delineation of the area of the mineral lease. I note also that the Department provided copies of appropriate plans to the objector under cover of letter dated 24 August 2006.
 2. Regarding the numerous separate issues encompassed in ground two:
 - (a) Access arrangements: The applicant pointed out that this issue was regulated by section 179 of the Act and that details of access and proposals to minimise the effects of such access were set out in detail in the PER. The applicant indicated that it was prepared to enter into arrangements with the objector in relation to any access roads.
 - (b) Compensation: The applicant pointed out, correctly in my view, that this was regulated by section 184 of the Act and that there is no obligation on the applicant to enter into any compensation arrangements as a pre-requisite. I note that the section sets out the liability for compensation. It provides for the warden to fix compensation where the parties are unable to agree on an amount. It would appear that the objector's rights in that regard are therefore sufficiently protected by the Act.
 - (c) Environmental impact, enforceable clean up, rectification and rehabilitation: The applicant pointed out that this was also dealt

with in detail in the PER. The applicant indicated that it expected that the outcomes of the PER would be reflected in the authorisation to be provided under the Mining Management Act and also correctly pointed out that the authorisation can, and almost invariably does, require security to be provided for rehabilitation obligations.

- (d) Fire Prevention: The applicant pointed out that this was regulated by section 166(1)(c) of the Act. The applicant also pointed out that it is aware of its obligations under the Bush Fires Act as an occupier and noted that it is then obligated to take all reasonable steps to prevent the spread of any uncontrolled fire. I note that section 166(1)(c) makes compliance with that Act a general and statutory condition of the mineral lease

3. The applicant noted that a request for a copy of the Mining Management Plan is not properly an objection and I agree. The applicant however indicated that subject to receiving appropriate confidentiality undertakings, it was prepared to provide the objector with extracts of the proposed Mining Management Plan which related to environmental issues.

- 10. The applicant also pointed out that the concerns expressed about the effects of previous mining ventures were not proper objections. I agree. Nonetheless the applicant addressed those concerns. Although such concerns are not truly in the nature of objections, the matters raised therein are indirectly relevant in that they serve to highlight environmental impacts and the need to ensure appropriate rehabilitation at the conclusion of the mining operation. The applicant asserts that the mining operations will not disrupt the operations of the objector's cattle property. The applicant notes its obligations under Section 66(g) of the Act to carry out its mining

activities with as little interference as possible with the rights of other occupiers.

11. In accordance with a direction agreed upon at a directions hearing on 10 November 2006, by letter dated 13 November 2006 the applicant's solicitors provided further information to the objector's solicitors. This dealt with matters of physical impact, weed management, fencing, fire management and security arrangements and also provided maps indicating existing and proposed structures on the mine site.
12. On 14 November 2006 the objector's solicitors formally withdrew the objection. As a result, at the hearing on 20 November 2006 the objector was not represented. Mr Stewart appeared for the applicant. He provided me with further information in support of the application. He did so in the form of a document in writing bearing that title. In summary form that sets out the following information:
 1. The historical background;
 2. That the total area of Ban Ban Springs Station is 187,300 hectares. In comparison the total area of all mineral leases is 1,642 hectares and the total area of the mineral lease the subject to this matter is 430 hectares. This represents .22 percent of the area of Ban Ban Springs Station;
 3. Details of the estimated value and benefits to be derived from the project as follows:
 - (a) The net value based on the current reserves is \$280 million.
 - (b) The estimated wages to result directly from the mine development are \$4.6 million per annum and including flow on will be \$5.9 million per annum. Directly there would be 76 jobs created in the Northern Territory and including the estimated

number of ancillary, incidental and service type jobs the number become 122.

- (c) Capital cost to develop the mine will exceed \$10 million largely to be spent in the Northern Territory but also to include the cost of equipment to be sourced from interstate.
- (d) Mining royalties to the Northern Territory Government will be of the order of 18 percent of the net value.
- (e) Other indirect benefits for traditional owners, local residents, local businesses, freight providers, the local shire and Darwin Port Corporation as well as an improvement to telecommunications infrastructure to the Pine Creek area are claimed.

4. Environmental Impact: The ample and significant work directed towards environmental impact and addressing environmental issues are set out including a list of the environmental impact reports commissioned by the applicant.

- 13. I am also told that the Environmental Protection Agency has considered the PER and the PER Supplement and has delivered its Environmental Assessment Report. A copy has been made available to me and I have considered its contents. I am also told, and accept, that consequent on that report, the Minister for Natural Resources, Environment and Heritage is satisfied that the relevant mining operation can be managed without causing undue environmental impact and has recommended that the Minister for Mines and Energy impose a number of conditions in the authorisation to be given pursuant to the Mining Management Act.
- 14. After considering the ample material provided I am satisfied in respect of all matters required by the Act and, pursuant to Section 59 of the Act I am prepared to recommend that the Minister for Mines and Energy grant the

subject mineral lease. These reasons form my report for the purposes of the recommendation.

15. As required by Section 59 of the Mining Act I now forward to the Minister for Mines and Energy this report together with all documentation and material considered by me in making this recommendation.

Dated this 21st day of November 2006.

Mr V M Luppino
Warden