

OUT17/28647

FILE NO: 0712-2016, 0712-2016, 0715-2016, 0768-2016, 0769-2016, 0073-2017, 0329-2017 and 0335-2017

TITLEHOLDER: Far Western Stone Quarries Pty Ltd

AUTHORISATIONS: ML 56, ML 57 and ML620

LEGISLATION: Sections 125 and 240AA of the *Mining Act 1992*

DECISION MAKER: Anthony Keon, Chief Compliance Officer,
NSW Resources Regulator

SECTION 125 DECISION TO CANCEL AUTHORITY

As authorised by section 125 of the *Mining Act 1992* (the Act), I, Anthony Keon, having delegated authority from the Minister, have decided to **cancel authorisations ML 56, ML 57 and ML620**, effective from **17 November 2017**.

SECTION 240AA DECISION TO VARY SUSPENSION NOTICE

As authorised by Section 240AA of the Act, I, Anthony Keon, having delegated authority from the Secretary administering the Mining Act, have decided to vary the section 240AA suspension notice issued to Far Western Stone Quarries Pty Ltd on 24 February 2017 to the following:

All mining operations under authorisation numbers ML 56, ML 57 and ML 620 are suspended, with the exception of the following activities:

- i. any activities undertaken to rehabilitate the mining site,
- ii. the removal of existing stockpiles from the mining site to assist with the rehabilitation of the site.

This decision takes effect immediately upon Far Western Stone Quarries Pty Ltd being notified of the decision.

REASONS FOR DECISION

Legislation

1. Section 125 of the Act that provides that the decision maker may cancel an authority as to the whole or part of the land to which it relates if satisfied that one or more specified grounds have been met.
2. Section 125(1) sets out the grounds for cancellation of an authority, which include if the decision maker is satisfied that:
 - a. the holder of the authority has contravened a provision of the Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention);
 - b. a person has contravened a condition of the authority (whether or not the holder is prosecuted or convicted of any offence arising from the contravention); or
 - c. there has been a contravention of a direction under section 240 or 240AA.
3. Section 126 of the Act provides that the decision maker must not cancel an authority unless the holder of the authority has been given at least 28 days in which to make representations with respect to the proposed cancellation, and any such representations have been taken into consideration.
4. Section 240B of the Act provides that a direction issued under 240AA of the Act may be revoked or varied by a subsequent direction issued in accordance with that Division.
5. A decision maker may delegate any functions conferred under the Act to another person. The Minister has delegated the functions to cancel an authority under section 125 of the Act to the Chief Compliance Officer of the NSW Resources Regulator. Similarly, the Secretary has delegated functions to issue a suspension direction under 240AA of the Act to the Chief Compliance Officer of the NSW Resources Regulator.

Background

6. ML 56 and ML 57 were first granted to Far Western Stone Quarries (the titleholder) on 20 August 1975 and authorises the prospecting and mining of gypsum. Each of the titles have an area of approximately 26.95HA and are located in the Fords Bridges area of New South Wales. The authorities were granted for a term of twenty one years and were due to expire on 19 August 1996.

7. Applications to renew these authorities were received on 2 August 1995. Those applications are under consideration by the Division of Resources and Geoscience (DRG).
8. ML 620 was first granted to the titleholder on 28 June 1978 and authorised prospecting and mining for gypsum. ML 620 has an area of approximately 13.47HA in the Fords Bridge area of New South Wales. The authority was granted for a term of twenty-one years and was due to expire on 27 June 1999.
9. An application to renew ML 620 was received on 8 May 1998. This application is under consideration by DRG.
10. Under section 117 of the Act, the authorities continue to have effect until the applications are finally disposed of.
11. On 24 February 2017 the titleholder was issued a suspension notice under section 240AA directing that all mining operations under the ML 56, ML 57 and ML620 (the authorities) be immediately suspended as a result of the titleholder failing to pay the required security rehabilitation deposit for the authorisations. The titleholder was also forewarned that should he fail to provide the additional security in full by 30 April 2017, then consideration would be given to further enforcement action, including cancellation of the authorities.
12. On 20 June 2017, the titleholder was invited to provide a submission in response to my proposed decision to cancel the authorities based on the following grounds (in respect of each individual title):
13. Section 125(1)(c) - Contravention of a condition of the authorities.
That I was satisfied that the titleholder had contravened the following conditions of each of the authorities:
 - a. Condition 131 by failing to pay the required securities, and
 - b. Condition '3B Annexure A' (condition 3B) by failing to provide the required annual environmental management report.
14. Section 125(1)(b) - Contravention of a provision of the Act or Regulation
By virtue of the contraventions of conditions 3B and 131 of each of the authorities, I was satisfied that the titleholder had contravened section 378D of the Act. I was also satisfied, that the titleholder had contravened section 292C(3) and 240C of the Act.

15. Section 125(1)(h) - Contravention of a direction under section 240 or 240AA

That I was satisfied that the titleholder had contravened a direction issued by an inspector under section 240 of the Act.

Submission from the titleholder

16. On 28 June 2017, the titleholder provided an email submission in response to the proposed decision to cancel the authorities. The key points of the titleholder's representations are summarised below:

- a. There is currently 12,000 tonnes of stockpiled material in 8 stockpiles over an area of approximately 1 hectare.
- b. The total disturbance area on site is about 1.5 hectares and that the disturbed area has been reduced by about 1/3 from the area shown on the Mining Operation Plan. The company has filled in an area on the eastern side of the site and this has been covered in topsoil. This work took place over the last 9 months.
- c. Rehabilitation obligations remain the same as last year and will be undertaken when weather allows. Over the next 3 winter months not a great deal will be achieved however weather permitting in the spring and summer most of the rehabilitation will be done by this time) in 2018 (i.e. 28 June 2018).
- d. If given the go ahead the company would probably transport to Bourke about 4000 tonnes of stockpiled product by September 2017. The balance will depend of orders coming out over winter.
- e. The rehabilitation process won't be hindered by the removal of the stockpiles. Rehabilitation will be very dependent on the weather as the mine is 80km on a dirt road from Bourke.
- f. The titleholder is willing to communicate the progress of rehabilitation via telephone or emails.
- g. The mine is only very small in scope of mines and should be finished in reasonable time if all goes to plan and weather permits.
- h. The company has not received a single enquiry on sale of products for the last 2 months and feels this due to the press release and pending closure of the mine by the department. The company has however received some telephone interest in sales.
- i. The cost of transporting the 12,000 tonnes would be approximately \$180,000 prior to selling the product. Then add in cost of removing the rocks and rubbish from the stock, fuel, labour and rent, royalties and shire rates. The total cost does not leave huge dollars floating to splash around. The restoration of these mines would be done

on an ongoing process of time and weather conditions and be paid for by out of the sales product and contributions from the titleholder's superannuation fund.

- j. The titleholder would prefer Bourke Gypsum Supplies to do its own restoration however he would see the restoration done. The titleholder believes he is being reasonable in asking for time to do the process and requests help from the Resources Regulator to allow for the removal of the product already mined.
- k. The titleholder's regret in the mines closing is that the town of Bourke is the net loser; one more business product not needed anymore shut down by regulations from a city centric policy with 2 people less employed in Bourke. Trucks to cart the product from Bourke not needed anymore.
- l. The titleholder is of the view that the business is not saleable because of the cost required to keep the business open.

Considerations and findings

- 17. I am satisfied the requirements of Section 126 (1) and (2) of the Act have been undertaken. The titleholder was notified of my proposed decision to cancel the authorities on 20 June 2017 and was afforded a period of greater than 28 days in which to respond, and did so. I have taken that submission into consideration.
- 18. After careful consideration of all the information before me, I am satisfied that the following grounds have been made out.

Condition 131 – Security deposit

- 19. I am satisfied that the titleholder has failed to provide the security required by condition 131 of the conditions of authorisation for ML 56, ML 57 and ML 620 and as such the titleholder has:
 - a. contravened a condition of each of the authorities, which constitutes a ground for cancellation pursuant to Section 125(1)(c) of the Act; and
 - b. contravened section 378D of the Act, which constitutes a ground for cancellation of the authorities pursuant to Section 125(1)(b) of the Act.
- 20. Details of the titleholder's contravention of condition 131 are set out below:
 - a. Condition 131(a) of the authorities states that the titleholder shall lodge with the Minister a bond in the form approved by the Minister with a surety approved by him, or other security in cash or otherwise as the Minister thinks proper to accept, for a

sum of dollars conditioned upon compliance with the terms and conditions of the authority.

- b. Condition 131(b) of the authorities' states that the Minister may increase or decrease the amount of the security required under condition 131(a) at any time after seven years from the commencement of the authorities.
- c. On 27 July 2016, the Division of Resources and Energy within the Department of Industry (DRE) (now DRG within the Department of Planning and Environment) issued the titleholder with a written notice in accordance with Section 261B of the Act, indicating that as of 31 July 2016 an increase in the security deposit requirements under condition 131 of the authorisations had been assessed as follows:
 - ML56 – security deposit to increase from \$1,000 to \$63,000,
 - ML57 – security deposit to increase from \$1,000 to \$35,000, and
 - ML620 – security deposit to increase from \$1,000 to \$12,000.
- d. The notice provided that the assessed security was required to be lodged with DRE within 42 days, namely by 12 September 2016.
- e. The titleholder failed to lodge the assessed security by 12 September 2016 as required. As a result, DRE referred the matter to the Resources Regulator for investigation on 7 November 2016.
- f. On 24 February 2017, following ongoing engagement with the titleholder, the Chief Compliance Officer of the NSW Resources Regulator, as a delegate of the Secretary, issued a direction to the titleholder pursuant to section 240AA of the Act directing that all operations under the authorities was to be immediately suspended. The notice permitted the titleholder to undertake activities directly related to rehabilitation of the area within the authorisations. The titleholder was also advised that, should the required additional security remain outstanding by 30 April 2017, the Resources Regulator would consider taking further enforcement action, including the cancellation of the authorities.
- g. At the time of this decision the required additional security remains outstanding for each of the authorities.

21. I note that the titleholder does not dispute that the security deposits for each of the authorities remains outstanding.

'Condition 3B Annexure A' – Annual Environmental Management Report

22. I am satisfied that the titleholder has failed to provide Annual Environmental Management Reports as required by 'condition 3B Annexure A' (condition 3B) of the conditions of each of the authorities, and as such the titleholder has:
- a. contravened a condition of each of the authorities, which constitutes a ground for cancellation pursuant to Section 125(1)(c) of the Act; and
 - b. contravened Section 378D of the Act, which constitutes a ground for cancellation pursuant to Section 125(1)(b) of the Act.
23. Details of the titleholder's contravention of condition 3B are set out below:
- a. Condition 3B was imposed on ML 56, ML 57 and ML 620 on 22 May 1998 by notice to the titleholder titled "new lease conditions".
 - b. Condition 3B (1) requires that, within 12 months of the commencement of mining operations and thereafter annually or at such times as may be allowed by the Secretary, the titleholder must lodge an Annual Environmental Management Report (AEMR) with the Secretary.
 - c. Departmental records indicate that the last AEMR was lodged with the department in 2007. This report was signed by the current titleholder. No AEMR has been lodged by the titleholder since that time.
 - d. On 21 January 2016, the titleholder was sent correspondence from DRE approving a MOP submitted by the titleholder. In this correspondence the titleholder was advised that an AEMR for the period from 5 February 2016 to 4 February 2017 was required to be submitted by 4 May 2017 (i.e. within 3 months of the end of the reporting period).
 - e. On 24 April 2017, a reminder letter was sent to the titleholder by DRG again advising that the AEMR was required to be lodged by 4 May 2017.
 - f. Departmental records indicate that the report due on 4 May 2017 has not been received.
 - g. The failure of the titleholder to lodge an AEMR since 2007 is a breach of condition 3B of each of the authorities, which constitutes an offence under section 378D of the Act.
24. In his submission of 28 June 2017, the titleholder did not make any representations in relation to the outstanding AEMRs.

Breach of 292C(3) of *Mining Act* – Failing to pay authorisation fees

25. Based on the material currently before me I am further satisfied that the titleholder has failed to pay authorisation fees for the authorities and as such has:
 - a. contravened Section 292C(3) of the Act, which constitutes a ground for cancellation pursuant to Section 125(1)(b) of the Act.

26. Details of the titleholder's contravention of Section 292C(3) of the Act are set out below:
 - a. Section 292C(3) of the Act provides that the holder of an authorisation must not fail to pay any annual rental fee or annual administrative levy payable under Part 14A of the Act for the authorisation.
 - b. On 10 July 2016, the titleholder was issued with invoice 797399 to pay \$200 for rents and levies for ML620. This invoice was due to be paid by 24 July 2016. This invoice was not paid by the titleholder by the due date.
 - c. On 10 September 2016, the titleholder was issued with invoice 819244 to pay \$805.18 for rents and levies for ML56. This invoice was due to be paid on 24 September 2016. This invoice was not paid by the titleholder by the due date.
 - d. On 10 September 2016, the titleholder was issued with invoice 819243 to pay \$525.18 for rents and levies for ML57. This invoice was due to be paid on 24 September 2016. This invoice was not paid by the titleholder by the due date.
 - e. On 8 February 2017, a letter was sent to the titleholder by email, advising the titleholder that the failure to pay the invoices for rents and levies in respect of ML56, ML57 and ML620 had been escalated to the Resources Regulator and inviting the titleholder to respond prior to any enforcement action being taken. No response was received by the Department.
 - f. On 13 March 2017, a further email was sent to the titleholder. Shortly after this email the titleholder telephoned the Department to indicate he was experiencing financial difficulties at the current time and requested that the Resources Regulator consider the reasons discussed in his correspondence of 30 January 2017 in respect of his failure to pay the required security deposit (as discussed in paragraph 23 below).
 - g. The three above mentioned invoices remain unpaid in contravention of Section 292C(3) of the Act.

27. In his submission of 28 June 2017, the titleholder did not make any representations in relation to the outstanding authorisation fees.

Breach of 240C of Mining Act – Contravention of a direction under section 240

28. Based on the material currently before me I am further satisfied that the titleholder has contravened a direction under section 240(1)(a) of the Act for the authorities and as such the titleholder has:
- a. contravened Section 240C of the Act, which constitutes a ground for cancellation pursuant to Section 125(1)(b) and 125(1)(h) of the Act.
29. Details of the titleholder's contravention of Section 292C(3) of the Act are set out below:
- a. On 30 January 2017, the titleholder sent an email to Justin Quinn, Compliance Officer with the Resources Regulator, where he stated, "*As I think I have mentioned before it is my intention to close the mine down. In closing the mine down we would like to transport to Bourke the product already mined which will allow us to regenerate the mine site.*" It is the Resources Regulator's understanding that when the titleholder indicating an intention of 'closing the mine down' he was indicating his intention to cease mining operations under the authorities.
 - b. On 31 March 2017, as a result of the titleholder's representations to the Resources Regulator on 30 January 2017, a notice was issued to the titleholder under section 240(1)(a) of the Act by David Blackmore, an Inspector appointed under Section 361 of the Act. The notice required the titleholder to prepare a mine closure plan in accordance with *ESG3 Mining Operations Plan Guidelines* as required by Condition 3A(3)(c) of Annexure A of the authorisations. The notice required the mine closure plan to be lodged with the Secretary by 28 April 2017.
 - c. At the close of business on 28 April 2017, no mine closure plan had been received by the Department.
 - d. At approximately 11.30am on 4 May 2017, Peter Ainsworth, an Inspector appointed under Section 361 of the Act, spoke with the titleholder on the telephone. The titleholder acknowledged receipt of the above mentioned notice. The titleholder advised that he had not acted on completing the required mine closure plan and was not willing to spend another \$2,000 to \$3,000 to complete the required plan.
 - e. The mine closure plan has still not been received by the Department. As a result of failing to supply the mine closure plan, the titleholder has contravened a direction issued by an Inspector under section 240 of the Act.
30. In his submission of 28 June 2017, the titleholder did not make any representations in relation to the contravention of the section 240 direction.

Conclusion

31. The multiple contraventions of the conditions of the authorities and breaches of the Act demonstrate a continued failure to observe regulatory obligations.
32. I note that the Department has engaged with the titleholder over a protracted period of time without being able to bring the titleholder back into compliance. The titleholder has been clear in his desire to close the mining operations of Far Western Stone Quarries and has clearly communicated that he does have the available finances to pay the required liabilities and to meet his regulatory obligations.
33. I further note that a significant proportion of the rehabilitation costs associated with the authorities lies with the removal or redistribution of the existing stockpiles. Of considerable concern, the Department does not currently hold sufficient security to cover the cost of this rehabilitation in the event that the titleholder defaults on its obligations.
34. The current suspension notices prohibits the titleholder from removing the stockpiles and, once the authorities are cancelled, the stockpiles become part of the land on which they are situated in accordance with section 11(3) of the Act – which means the titleholder no longer has claim to the minerals in the stockpiles and cannot remove them from the site (once cancelled).
35. Having regard to the Objects of the Act, and in particular the need to recognise and foster the significant social and economic benefits to New South Wales that result from the efficient development of mineral resources, I am of the view that it would be preferable for the stockpiles to be removed from the site - rather than requiring the extracted minerals to be rehabilitated back into the land from which it was extracted. In this respect I also note that liabilities in relation to royalties payable to the State are enlivened on the extraction of the material, so in this instance the titleholder is already required to pay royalties on the stockpiled material.
36. However, allowing the titleholder an opportunity to remove the stockpiles, while assisting with the rehabilitation process, must be balanced against allowing the continued operation of the authorities in non-compliance with the Act.

37. The titleholder has already been provided a significant amount of time to remedy the non-compliance issues and, of significant concern is that, despite being subject of a suspension notice, the titleholder has continued to commit offences under the Act by failing to respond to a statutory direction.
38. In the complete absence of an ability to return to, and maintain, compliance with the Act, it is only appropriate that the authorities be cancelled. However, to enable the best possible rehabilitation outcome for the State, I believe it is appropriate to provide for a lead time of three months before the cancellations take effect, in order to promote timely and cost effective rehabilitation of the site by giving the titleholder an opportunity to remove stockpiled material from the site. In this respect I have determined to vary the existing suspension notice to allow for the removal of the stockpiles in the intervening period to assist with the rehabilitation process.
39. Accordingly, and based on the material before me, I am satisfied that the titleholder:
- a. has contravened conditions 131 and 3B Annexure A of ML 56, ML57 and ML 620, which provides grounds for cancellation of the authorities under section 125(1)(c) of the Act.
 - b. has contravened section 378D of the Act by virtue of the contraventions of conditions 31 and 3B Annexure A of ML 56, ML57 and ML 620, which provides grounds for cancellation of the authorities under section 125(1)(b) of the Act.
 - c. has contravened section 292C(3) of the Act by virtue of the failing to pay the required rents and levies for ML 56, ML57 and ML 620, which provides grounds for cancellation of the authorities under section 125(1)(b) of the Act.
 - d. has contravened section 240C of the Act by virtue of the contravention of failing to adhere to a direction under section 240 of the Act for ML 56, ML57 and ML 620, which provides grounds for cancellation of the authorities under section 125(1)(b) and 125(1)(h) of the Act.

I am further satisfied that, both individually and collectively, the above grounds warrant the cancellation of the three authorities, effective from 17 November 2017.

40. I have also determined that it is appropriate to vary the section 240AA suspension notice issued to Far Western Stone Quarries Pty Ltd on 24 February 2017 to allow permit the removal of the existing stockpiles, effective immediately up to the cancellation of the authorities.

41. Finally, I note that the cancellation of the authority also in no way precludes the Resources Regulator from taking any other action against the titleholder in respect of the authority, including the commencement of legal proceedings in relation to any of the identified breaches that form the basis of this decision.

Date of decision: 17 August 2017



Anthony Keon
Chief Compliance Officer
Resources Regulator

RIGHT OF APPEAL

Should you be aggrieved by this decision, you may appeal to the Land and Environment Court against the decision. Such appeal must be made within **14 days** of the date of the notification of this decision, or within such further period as the Land and Environment Court may allow.