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MINERAL CLAIMS: MC24202 and MC55398

CLAIM HOLDER: Mr Sheref Sancar

LEGISLATION: Section 203 of the *Mining Act 1992*

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

SECTION 203 DECISION TO CANCEL MINERAL CLAIMS

As authorised by section 203 of the *Mining Act 1992* (the Act), I, Anthony Keon, having delegated authority from the Secretary of the Department of Planning and Environment, have decided to **cancel mineral claims MC24202 and MC55398**.

This decision takes effect immediately upon the claim holder being notified of the decision.

REASONS FOR DECISION

Legislation

1. Section 203 of the Act that provides that the decision maker may cancel a mineral claim 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 203(1) sets out the grounds for cancellation of a mineral claim, which include, if the decision maker is satisfied that;
 - a. The holder of the claim contravenes a provision of the Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention); or
 - b. a person has contravened a condition of the claim (whether or not the holder is prosecuted or convicted of any offence arising from the contravention).

3. Section 204 of the Act provides that the decision maker must not cancel a claim unless the holder of the claim has been given a reasonable opportunity to make representations with respect to the proposed cancellation, and any such representations have been taken into consideration.
4. The Secretary may delegate any functions conferred under the Act to another person. The Secretary has delegated the functions to cancel a mineral claim under section 203 of the Act to the Chief Compliance Officer of the NSW Resources Regulator.

Background

5. Mineral Claim (MC) 24202 was first granted to Mr Sheref Sancar on 27 August 1990 and is a Class A Ordinary Mineral Claim located in the Kellies 3 C25 opal field area near Lightning Ridge. The mineral claim is current with an expiry date of 30 June 2018.
6. Mineral Claim (MC) 55398 was first granted to Mr Sheref Sancar on 7 October 2008 and is a Class A Ordinary Mineral Claim located in the Kellies 3 C25 opal field near Lightning Ridge. The mineral claim is current with an expiry date of 31 October 2018.
7. On 22 May 2018, the claim holder was invited to provide a submission in response to my proposed decision to cancel MC24202 and MC55398 based on the following grounds for each claim:
 - a. Condition 2 of the mineral claim conditions requires the claim holder to comply with provisions of the Mining Act 1992, the Mining Regulations 2016, the Work Health and Safety Act 2011, its regulations, Work Health and Safety (Mines and Petroleum Sites) Act 2013, its regulations and all relevant NSW environmental and other legislation.
 - b. Condition 5 of the mineral claim conditions requires the claim holder to conduct operations in a manner that does not endanger the safety of any person or any stock and must ensure that all shafts, drill holders and excavations are appropriately protected.
8. Section 203(1)(c1) - Contravention of a condition of the mineral claim.

- c. Condition 8 of the mineral claim conditions requires the claim holder to ensure operations are carried out in a manner that does not cause or aggravate air pollution, soil contamination, erosion or impede any watercourse.
9. Section 203(1)(c) – Contravention of a provision of the Act or Regulations.
- a. By virtue of the contraventions of conditions 2, 5 and 8 of each of the mineral claims, the claim holder has contravened section 378D of the Act.

Opportunity for claim holder to respond

10. On 5 March 2018, correspondence was forwarded to the claim holder concerning the proposed decision to cancel MC24202 and MC55398. The claim holder was invited to make a submission about the proposed decision. No submission was received. I note the correspondence contained an administrative error.
11. On the 22 May 2018, further correspondence was forwarded to the claim holder and he was invited to provide a submission in respect to the proposed decision by 13 June 2018. No submission has been received from the claim holder.

Considerations and findings

12. After considering all the information before me, I am satisfied that the claim holder of MC24202 and MC55398 has:
- a. contravened section 378D of the Act, which constitutes a ground for cancellation of the mineral claims pursuant to Section 203(1)(c) of the Act and,
 - b. contravened a number of conditions of the mineral claims which constitutes a ground for cancellation of MC24202 and MC55398 pursuant to section 203(1)(c1) of the Act.
13. The contraventions include:

Condition 2 – Complying with provisions of Mining Act, it's Regulations and other relevant legislation

14. Condition 2 states that *“the claim holder must comply with the provisions of the Mining Act 1992, the Mining Regulation 2016, the Work Health and Safety Act 2011, its Regulations, Work Health and Safety (Mines and Petroleum Sites) Act 2013, its Regulations and all relevant NSW environmental and other legislation.”*
15. Details of the claim holder’s contravention of condition 2 for MC24202 are set out below:
 - a. At about 9.30 am on 12 July 2018, authorised inspectors under the *Mining Act 1992* and *Work Health and Safety Act 2011* conducted an inspection of MC24202.
 - b. The inspection found the claim had a total of 10 shafts on the claim of which 6 shafts were not adequately protected in accordance with the minimum standards and a further shaft, whilst protected, had erosion around the shaft causing a hazard. The inspection also found that the hoist installed on the claim had inadequate mechanical guarding to protect a person from rotating equipment.
 - c. On 4 August 2017, an Inspector issued two improvement notices under section 191 of the *Work Health and Safety Act 2011* to the claim holder in respect of the non-compliance issues identified on MC24202.
 - d. Notice N191-2017/00396 was issued requiring shafts at the claim to be adequately protected to prevent persons from falling down the shafts. The works were required to be completed by 12 December 2017.
 - e. Notice N191-2017/00435 was also issued requiring a guard to be installed on the mechanical hoist to prevent a body part entering a danger zone. The works were required to be completed by 12 February 2018.
 - f. Both statutory notices were sent via registered post and delivered on 22 September 2017.
 - g. Follow up inspections of the claim on 9 February 2018 identified some attempt to protect the shafts with barbed wire and fence posts. But the Inspector formed the view that the action taken to protect the shafts was insufficient and the protection failed to meet the department’s minimum standards. As such the actions required in notice N191-2017/00396 had not been completed by the due date.

- h. A further inspection on 19 February 2018, verified that a guard as required by notice N191-2017/00435 had not been installed by the due date.

- 16. As a result of the failure to comply with the requirements of the two statutory notices the claim holder breached the *Work Health and Safety Act 2011* and therefore breached condition 2 of the mineral claim conditions.

- 17. Details of the claim holder's contravention of condition 2 for ML55398 are set out below:
 - a. At about 9.50 am on 12 July 2017, authorised inspectors under the *Mining Act 1992* and *Work Health and Safety Act 2011* conducted an inspection of MC55398.

 - b. The inspection found the claim had a total of 14 shafts on the claim of which 12 shafts were not adequately protected in accordance with the minimum standards and a further shaft, whilst protected, had erosion around the shaft causing a hazard. The inspection also found two ladders on the claim were not protruding the required 900mm from shafts and were not secured to the structure. Further, safety issues were also identified with an electrical cable.

 - c. On 23 August 2017, an Inspector issued three improvement notices under section 191 of the *Work Health and Safety Act 2011* in respect of the non-compliance issues identified on MC55398.

 - d. Notice N191-2017/00393 was issued requiring shafts at the claim to be adequately protected to prevent persons from falling down the shafts. The works were required to be completed by 12 December 2017.

 - e. Notice N191-2017/00394 was issued requiring the shaft ladders to be adequately secured to the surface. The works were required to be completed by 12 December 2017.

 - f. Notice N191-2017/00395 was issued requiring electrical cables entering the shaft to have protection from abrasion and excessive stress. The works were required to be completed by 12 December 2017.

- g. Records show the three notices were sent via registered post and delivered on 22 September 2017.
 - h. Follow up inspections of the claim occurred on 9 February 2018, identified some attempt to protect the shafts with barbed wire and fence posts. But the Inspector formed the view that the action taken to protect the shafts was insufficient and the protection failed to meet the department's minimum standards. As such the actions required in notice N191-2017/00393 had not been completed by the due date.
 - i. A further inspection on 19 February 2018 verified that the concerns relating to the ladders and the electrical cables had not been rectified as required in notice N191-2017/00394 and N191-2017/00395 by the due date.
18. As a result of the failure to comply with the requirements of the three statutory notices, the claim holder breached the *Work Health and Safety Act 2011* and therefore breached condition 2 of the mineral claim conditions.

Condition 5 – Operating claim in a safe manner

19. Condition 5 states that *“the claim holder must conduct operations in a manner that does not endanger the safety of any person or any stock and must ensure that all shafts, drill holes and excavations are appropriately protected to ensure access to them by persons and stock is restricted. Abandoned shafts and excavations must be filled in to the satisfaction of, the Director-General, an Inspector, a Mine Safety Officer or an Environmental Officer. All drill holes must be filled in (to the appropriate standard) as soon as they cease to be used.”*
20. Details of the claim holder's contravention of condition 5 for ML24202 are set out below:
- a. During the inspection of MC24202 on 12 July 2017, authorised inspectors found the claim had a total of 10 shafts on the claim of which 6 shafts were not adequately protected in accordance with the minimum standards of securing shafts.
21. A failure to adequately protect shafts on a mineral claim is a breach of condition 5 of the mineral claim conditions.

22. Details of the claim holder's contravention of condition 5 for ML55398 are set out below:

- a. During the inspection of MC55398 on 12 July 2017, authorised inspectors found the claim had a total of 14 shafts on the claim of which 12 shafts were not adequately protected in accordance with the minimum standards of securing shafts.

23. A failure to adequately protect shafts on a mineral claim is a breach of condition 5 of the mineral claim conditions.

Condition 8 – Air, water, soil pollution and erosion

24. Condition 8 states that *“the claim holder must ensure that operations are carried out in a manner that does not cause or aggravate air pollution, water pollution, soil contamination or erosion or impede any watercourse. The claim holder must observe and perform any instructions given by, the Director-General, an Inspector, a Mine Safety Officer or an Environmental Officer in relation to these matters.”*

25. Details of the claim holder's contravention of condition 8 for ML24202 and ML55398 are set out below:

- a. During the inspection of MC24202 on 12 July 2017, authorised inspectors found erosion at the claim in the vicinity of a shaft.
- b. During the inspection of MC55398 on 12 July 2017, authorised inspectors found erosion at the claim in the vicinity of a shaft.

26. A failure to adequately manage erosion at the mineral claims is a breach of condition 8 of the mineral claim conditions.

Further site inspection to monitor compliance

27. On 20 June 2018, a further site inspection of MC24202 and MC55398 confirmed that the required works have not been undertaken and the non-compliance issues remain unrectified.

Conclusion

28. The Regulator has attempted to engaged with the claim holder to achieve compliance using a range of regulatory tools to no avail.
29. The ongoing contraventions by the claim holder of the conditions of MC24202 and MC55398 and breaches of the safety and mining laws demonstrate a continued failure to observe regulatory obligations.
30. I am satisfied the requirements of Section 204 (1) of the Act have been met. The claim holder was notified of my proposed decision to cancel the mineral claims on 25 May 2018.
31. The claim holder was afforded a reasonable opportunity to make representations with respect to the proposed cancellation, and has not responded.
32. Based on the material before me, I am satisfied that the claim holder:
 - a. Has contravened section 378D of the Act by virtue of the contraventions of conditions 2, 5 and 8 of MC24202 and MC55398, which provides grounds for cancellation of the mineral claims under section 203(1)(c) of the Act.
 - b. Has contravened conditions 2, 5 and 8 of MC24202 and MC55398, which provides grounds for cancellation of the mineral claims under section 203(1)(c1) of the Act.
33. I am satisfied that, both individually and collectively, the above grounds warrant the cancellation of the two mineral claims.
34. While I note that claim (MC) 24202 is due to expire shortly on 30 June 2018, and MC55398 in a few months on 31 October 2018, I am of the view that it is important to continue with the cancellation process as I am satisfied that appropriate grounds exist.
35. This will ensure that the titleholder's compliance record adequately reflects that enforcement action, in one of the most significant forms being cancellation of an authority, was taken against him, and to provide general and specific deterrence for this type of conduct. Cancellation will also ensure that no applications for renewal can be lodged in the intervening period.

36. Accordingly, I have determined to cancel mineral claims MC24202 and MC55398 under Sections 203(1)(c) and 203(1)(c1) of the Act effective immediately upon the claim holder being notified of this decision.

37. I note that the cancellation of the mineral claims in no way precludes the Resources Regulator from taking any other action against the claim holder in respect of the mineral claims, including the commencement of legal proceedings in relation to any of the identified breaches that form the basis of this decision.

Date of decision: **25 June 2018**



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.