

Authorisation	Mining Lease 1259 (Act 1973)
Leaseholder	Mr. Michael Leu Mr. Graham Thomas Mr. Noel Dennis Mr. Kenneth Peters
Legislation	Section 125 of the <i>Mining Act 1992</i>
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Department of Planning, Industry and Environment

## SECTION 125 - DIRECTION TO CANCEL AUTHORITY

As authorised by Section 125 of the *Mining Act 1992* (**Act**), I Anthony Keon, having delegated authority from the Minister, have decided to **cancel** authorisation Mining Lease 1259 (Act 1973) (**ML 1259**), effective from **25 February 2020**.

## REASONS FOR DECISION

### Legislation

1. Section 125 of the Act provides that the decision-maker may cancel an authority as to the whole or any part of the land to which it relates if satisfied that one or more specified grounds have been met.
2. Section 125(1)(c) of the Act sets out the grounds for cancellation of an authority, which includes if the decision-maker is satisfied that a person has contravened a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
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 considerations.
4. Section 363(1) of the Act provides that the Minister may delegate any functions conferred under the Act to another person; and the Minister has delegated the functions to cancel an authority under section 125 of the Act to the Executive Director of the NSW Resources Regulator (**the Regulator**).

## Background

5. Mining Lease 1259 (**ML 1259**) was first granted on 27 May 1992 and transferred to the four current leaseholders on 4 November 2003. The lease covers approximately 4.85 hectares of land situated 16km NNW of Coffs Harbour NSW and was granted for the purpose of mining gold. ML 1259 is due to expire on 26 May 2023.
6. A security of \$10,000 is currently held against ML 1259 by the Department of Planning, Industry and Environment (**the Department**).
7. In 2017, the Regulator investigated alleged contraventions of ML 1259 lease conditions including failure to pay administrative fees and other reporting requirements under the Act.
8. The investigation substantiated a number of the allegations and compliance action was taken. The investigation also noted that two of the four leaseholder were deceased.
9. Following the Regulator's investigation, two of the leaseholders made an application to the Department seeking to voluntarily cancel ML 1259. The application omitted the consent of two of the titleholders who were deceased.
10. The surviving leaseholders expressed no intention to mine the lease and by relinquishing the lease, would eliminate further risk of non-compliances being committed.
11. However, the cancellation of ML 1259 was not approved by the Department due to legislative complexities a which require the consent of all leaseholders. Despite reasonable attempts by the surviving leaseholders they were unable to obtain such consent from the two deceased title holders or executives of their estates.

## Grounds for Cancellation

12. I have reviewed the authority within the context of Part 7, Division 3 of the Act, and I am satisfied that grounds for cancellation exist.
13. Pursuant to section 378D(1) of the Act, the holder of an authority is guilty of an offence should any person contravene a condition of authorisation.
14. The grounds for cancellation of ML 1259 is based upon section 125(1)(c) of the Act, in which a person (the leaseholders) have contravened conditions of ML 1259, being Conditions 2 and 4.
  - a. Condition 2 of ML 1259 was contravened by the leaseholders' failure to submit a Mining Operations Plan (MOP) prior to its expiry. In 2017 the leaseholders were requested to submit the required MOP, but as of the date of this decision an approved MOP has not been submitted.
  - b. Condition 4 of ML 1259 was also contravened by the failure of the leaseholders to employ at least 2 competent people and expend an amount of not less than

\$35,000 per year on operations carried out in the course of prospecting or mining the lease.

## Representations

15. On 18 December 2019, I wrote to the leaseholders inviting submissions in response to my proposed decision to cancel ML 1259 by no later than 31 January 2020.
16. On 31 January 2020, one of the leaseholders lodged a submission in response to the proposed cancellation (on behalf of the two-surviving leaseholders).
17. The leaseholders submitted that:
  - a. the primary reason for the contraventions were attributed to the Department correspondence not being received by all leaseholders;
  - b. the inability to contact the estates of the deceased leaseholders prevented the Department from taking the normal route to cancel the mining lease;
  - c. the surviving leaseholders have made bona-fide efforts to voluntarily cancel the title and generally support the Regulator's proposed decision to cancel ML 1259 subject to caveats about further contraventions being recorded against the leaseholders.

## Considerations and findings

18. I am satisfied that the requirements of section 126(1) and (2) of the Act have been met, in that the surviving leaseholders were notified of my proposed decision to cancel the authority on 18 December 2019 and given 28 days to respond.
19. I acknowledge the leaseholder's submission of 31 January 2020 and I have fully considered the matters raised in their submission.
20. I am satisfied that there is sufficient evidence to cancel ML 1259, in that the leaseholder has failed to comply with the following conditions of ML 1259:
  - a. Contravention of Condition 2, which constitutes a ground for cancellation under section 125(1)(c) of the Act;
  - b. Contravention of Condition 4, which constitutes a ground for cancellation under section 125(1)(c) of the Act; and
  - c. Contravention of section 378D of the Act, '*Contravention of condition of authorisation – offence by holder*', which constitutes grounds for cancellation under section 125(1)(c) of the Act.
21. I note in the leaseholder's submission that the Department correspondence relating to ML 1259 was not received by all leaseholders and that this inadvertently led to the contraventions being committed.

# Mining Act Cancellation

---

## Reasons for decision



22. In this respect I acknowledge that Department correspondence regarding ML 1259 was sent over a period of time to the main leaseholder. However, following his death in 2005 the Department was not advised of any change of contact details to ensure the remaining leaseholders were informed of their obligations under ML 1259.
23. I also note the desire for the two surviving leaseholders to relinquish the title. However, due to complexities with the legislation, they are unable to do so without the express consent of the estates of the deceased titleholders which they have been unable to obtain.
24. Whilst I acknowledge the difficulties experienced by one of the surviving leaseholders in his attempt to relinquish ML 1259 in 2017, and that certain circumstances inadvertently attributed to the contraventions, the remaining leaseholders still have an ongoing responsibility to comply with the conditions of ML 1259.
25. In this respect the title remains in force and the leaseholders continue to have compliance obligations, including a requirement to pay rents and levies – despite the surviving leaseholders having no desire to exercise any functions or rights under the lease.
26. While I am of the view that the identified contraventions are at the lower end of the scale and in isolation may not ordinarily warrant cancellation, given the above circumstances I am satisfied that in this instance it is appropriate to cancel the lease.
27. I note the surviving lease holders have no objection to my proposed decision to cancel ML 1259.
28. In this regard, I have determined to cancel ML 1259 under section 125(1)(c) of the Act, effective from 25 February 2020

Date of decision: **24 February 2020**

A handwritten signature in blue ink, appearing to read 'Anthony Keon'.

**Anthony Keon**  
Executive Director  
NSW 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.