

Authorisation	Mining Lease 1127 (Act 1973)
Leaseholder	Mr. Aubrey Teague Mr. Raymond Scholes
Legislation	Section 125 of the <i>Mining Act 1992</i>
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Regional NSW

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 1127 (Act 1973) (**ML 1127**), effective from 12 June 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)(b) of the Act sets out the grounds for cancellation of an authority, which includes if the decision-maker is satisfied that the holder of the authority has contravened a provision of the Act (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
3. 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).
4. 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.
5. 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

6. Mining Lease 1127 (**ML 1127**) was first granted on 31 July 1984 and transferred to the current leaseholders on 24 September 2001. The lease covers approximately 3.169 hectares of land situated 41km ENE of Scone NSW and was granted for the purpose of mining gold. ML 1127 is due to expire on 30 July 2024.
7. A security of \$10,000 is currently held against ML 1127 by Regional NSW (**the Department**).
8. Between 2015 and 2019, the Regulator investigated alleged contraventions of lease conditions associated with annual reporting requirements and the failure to pay administrative fees under the Act.
9. The investigation substantiated a number of allegations and compliance action was taken. The investigation established that one leaseholder passed away in 2015 and the surviving leaseholder is now in nursing home care.
10. I note that due to ill health the surviving leaseholder is incapable of managing the on-going obligations required under the authorisation.
11. In this regard, the surviving leaseholder sought to relinquish the lease and has no intention to continue mining the site.
12. However, despite a genuine attempt to relinquish the lease, this did not proceed due to legislative complexities. The Act requires the express consent of both leaseholders, and despite all reasonable efforts, consent was unable to be obtained from the deceased's estate.

Grounds for Cancellation

13. 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.
14. The grounds for cancellation of ML 1127 is based upon sections 125(1)(b) and 125(1)(c) of the Act.
15. The leaseholders have contravened a provision of section 292C of the Act and Conditions 3 and 6 of ML 1127.
 - a. Section 292C of the Act was contravened by the failure to pay the required rent and levy fees for ML 1127 in 2019. Although the leaseholders were notified of the overdue fees, the payment remains outstanding.
 - b. Condition 3 of ML 1127 was contravened by failure to submit an Annual Environmental Management Report (AEMR) for 2017. Although the leaseholders were notified of this requirement, the report remains outstanding.

- c. Condition 6 of ML 1127 was contravened by the failure to submit an Annual Exploration Report (AER) for years 2017 and 2018. Although the leaseholders were notified of this requirement, both reports remain outstanding.

Representations

16. On 23 April 2020, I wrote to leaseholders inviting submissions in response to my proposed decision to cancel ML 1127 by no later than 25 May 2020.
17. On 24 April 2020, an immediate family member, on behalf of the surviving leaseholder, notified the Department that there is no objection to the proposed cancellation. No further representations have been received by the Department.

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 leaseholder was notified of my proposed decision to cancel the authority on 23 April 2020 and given 28 days to respond.
19. I acknowledge the submission expressed by the immediate family member on behalf of the surviving leaseholder and am cognisant of his personal circumstances.
20. I am satisfied that there is sufficient evidence to cancel ML 1127, in that the leaseholders contravened a provision under section 292C of the Act, which constitutes a ground for cancellation under section 125(1)(b) of the Act.
21. I am satisfied that the leaseholders failed to comply with the following conditions of ML 1127:
 - a. Contravention of Condition 3, which constitutes a ground for cancellation under section 125(1)(c) of the Act;
 - b. Contravention of Condition 6, 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*', constitutes grounds for cancellation under section 125(1)(c) of the Act.
22. I have given due regard to the desire of the surviving leaseholder to cancel the lease and appreciate that legislative complexities prevented the cancellation of the lease.
23. Whilst I acknowledge those difficulties, there still remains a responsibility to comply with the conditions of ML 1127 while the lease remains active.
24. In this regard, the leaseholders continue to have compliance obligations, despite the surviving leaseholder having no desire to exercise any functions or rights under the lease.

Reasons for decision

25. I am of the view that the identified contraventions are at the lower end of the scale and ordinarily may not warrant cancellation. However, given the titleholders inability to voluntarily surrender the title, and that fact that further non-compliances are likely to occur, I am satisfied that it is appropriate to cancel ML 1127.
26. Accordingly, I have determined to cancel ML 1127 under sections 125(1)(b) and 125(c) of the Act, effective from **12 June 2020**.

Date of decision: **05 June 2020**



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.