WESTERN AUSTRALIA

Environmental Objections to Grant of Mining Tenements

The long running saga of environmental objections to applications for Mining Leases in the Shire of Serpentine-Jarrahdale (to the south-east of Perth) has resulted in a setback for the objectors in the Perth District Mining Warden's Court in April 1996.

Mr Paul Heaney, SM, sitting as the Mining Warden in open court hearing the tenement applications, held that the three objectors (the Serpentine-Jarrahdale Ratepayers' & Residents' Association, Kailis Consolidated Pty Ltd trading as Baldivis Estate and The Sport Aircraft Builders Club of WA Inc.) could not pursue their objections to the tenement applications. Despite the fact that the *Mining Act* 1978 (WA)[1] contains no express limitation on either the type of person who may object to a Mining Lease application or the type of objection that may be made, the Full Court of the Supreme Court of Western Australia, by majority, held in *Re Warden French; ex parte Serpentine-Jarrahdale Ratepayers and Residents Association*[2] that, although the warden was bound to hear public interest objections to applications for Mining Leases:

> "only a person with the requisite standing may object, and it is for the Warden to determine whether the objector has that standing: *Ex parte Helena Valley / Boya Association (Inc)* [(1989) 2 WAR 422] ... It is also for the Warden to determine whether the objection sought to be raised does go to the public interest: *Sinclair v Mining Warden* at *Maryborough*".

Warden Heaney held that the Ratepayers' Association did not have the requisite special interest to satisfy the public interest test of standing and that the other two objectors were pressing only private interests that were otherwise provided for under the Act and could not pursue their interests by way of objection to the applications.

I will briefly review the Warden's description of the nature of each of the objectors, their objections and the Warden's determination in respect of them.

The Ratepayers' & Residents' Association

The Association was formed at a public meeting in 1987 attended by about 500 people and had 141 paid up members as at the date of the hearing of the matter before the Warden. There are 26 lots within the area of the tenement applications, of which 13 are owned by members of the Association. The Constitution of the Association, clause two, states its objects to include:

> "i) To protect and safeguard the interests of ratepayers and residents;
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> ii) To procure ... adequate public facilities;
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> iii) To provide means of entertainment, improvement and recreation for residents;
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> iv) To assist or join any movement calculated to benefit, improve or develop the district generally;
>
> vi) To do all such acts, matters and things ... incidental or conducive to the attainment of the above objects ..."

The Association gave fifteen particular grounds of objection in the public interest to the grant of the Mining Leases. The Warden held that the last three of these were matters of private interest. The Warden considered the applicable test of public interest standing by quoting extensively from the judgment of Sackville J in *North Coast Environment Council v Minister for Resources*[3], including passages from the High Court judgment in *Australian Conservation Foundation v the Commonwealth*[4] He emphasised the factors which Sackville J had relied upon to find that the North Coast Environment Council had demonstrated a special interest and then concluded by comparing the credentials of the Association. The Warden's comments are worth quoting in full.

> " it is clear from the evidence received in this court that the status of the Ratepayers' Association as a representative of environmental interests falls way below that of the North Coast Environment Council. The Ratepayers' Association does not have environmental or conservation interests as one of its stated objects. It produced no evidence of any role as a commentator on environmental issues. It cannot be said to have any status as an environmental organisation as compared to North Coast being described as a peak environmental organisation. It gave no evidence of being recognised by the State or Commonwealth governments as a responsible environmental organisation. Even the local shire, whilst putting money aside for the Association, has not as yet seen fit to contribute any money to the Association for the pursuit of environmental objectives. It appears to have no representation on advisory committees representing environmental concerns. There is no evidence that it has conducted or co-ordinated conferences or seminars on matters of environmental concern. It has no involvement in making submissions to Governments or the Mining Industry on mining management issues. The objects of the Ratepayers' Association are clearly to further the interest of the ratepayers. The Association's motives for objecting to the grant of the mining leases in this case seem more for the protection of their own members private interests than for the

protection of the environment. They perceive that sand mining will be detrimental to their private interests and thus their objections to these applications. It clearly does not have the same characteristics as North Coast and as a representative of environmental interests, it does not even approach the North Coast Environment Council."

Baldivis Estate

The second objector, Baldivis Estate, owns about 300 acres of land in the Shire and uses it for growing grapes and fruit. It has plans to expand into other horticultural activities and tourist activities. The Warden said that the grounds of the objection were based on private interests and environmental matters (supposedly, public interest environmental matters).

The Aircraft Club

The Club has an airfield in the Shire with extensive facilities including a club house, a club hanger and 45 private hangers, a workshop for aircraft maintenance and other incidental club facilities. Some or all of the Club's property (it is not clear from the Warden's reasons) is in the area of the tenement applications. The Club plans to expand and the mining tenement applications threaten their operations. The Warden said that the Club's objections were based on private interests and environmental matters.

The Warden held that matters of private interest could not properly be the subject of objections to the applications for the grant of Mining Leases. In this regard, he accepted the argument of the tenement applicants, based on a comment of Jacobs J in *Sinclair v Mining Warden* at Maryborough[5], that competing private interests are separately dealt with under the Act in provisions such as those relating to access to private land and compensation for the harmful effects of mining on private land. The Warden held that, although the terms of the Queensland mining legislation being interpreted in Sinclair had no equivalent in the *Mining Act* 1978 (WA), the view of Jacobs J that private interests were not relevant considerations in the determination of the public interest "states a principle relevant to mining law in Western Australia".

The Warden further held that Baldivis Estate and the Sport Aircraft Club were even more wanting than the Ratepayers' Association in the necessary characteristics for gaining standing to present public interest objections.

Alex Gardner
Law School, University of Western Australia, Perth

1 Mining Act 1978 (WA) s.75(2)
2 (1994) 11 WAR 315
3 (1994) 55 FCR 492.
4 (1980) 146 CLR 493.
5 (1975) 132 CLR 473 @ 487.

NEW ZEALAND

1996 RMLA Conference

The 1996 RMLA Conference will be held at the Aotea Centre in Auckland on **Thursday 4 - Saturday 6 October 1996**. It looks to be the largest conference yet with expected attendance by over 500 delegates in the fields of planning, science, engineering, law, industry and government.

The theme of the conference is ***"Resource Management - Contentious Issues"***. The program will feature presentations and discussions on current issues including topics on:

* The RMA: no longer a "one stop shop"?;
* Intervenor funding and public participation;
* Greenhouse gases: the C02 debate;
* Property rights versus public rights;
* Residential growth and urban limits.

For more information contact: Trish Fordyce at Rayonier New Zealand (Ph: 0011 64 9 302 2988 or Fax: 0015 64 9 302 1843) or Phil Mitchell at Kingett Mitchell (Ph: 0011 64 9 486 8086 Fax: 0015 64 9 486 8072)

Conservation Amendment Act 1996

The *Conservation Amendment Bill* (No 2) which was introduced to Parliament in 1993, has now become law.

One of the purposes of the amendment was to create a uniform regime for the Minister of Conservation to grant leases, licences, permits, and easements (collectively termed "concessions") for people to undertake activities within conservation areas, including marginal strips. This includes activities such as piers and jetties, grazing of animals and "ecotourism" ventures.

Marginal Strips

Under the *Conservation Act* 1987 marginal strips are strips of land 20 metres wide running along all foreshores, lake beds and beds of rivers and streams. The strips are reserved when the Crown sells land adjacent to these areas and generally cannot be sold or disposed of by the Crown.

The requirement to retain these margins in public use has a long history. It is thought to date back to an instruction from Queen Victoria to Governor Hobson in 1840 so that the strips are popularly known as the "Queen's Chain". The original amendment Bill enabled the Minister to grant exclusive possession in the form of leases over marginal strips. Concern was raised that this would necessarily prevent public access along foreshores, rivers and lakes. In response to these concerns, the Bill has been amended to provide that the Minister may not grant a lease over a marginal strip unless he or she is satisfied that exclusive access to the marginal strip is essential to the carrying out of the proposed activity. In