

Finesky Holdings Pty Ltd v Australian Speleological Federation (Inc) & Ors
[2001] WAMW 1

Application for mining lease – Mining Act 1982 (WA)
Environmental Protection Act 1986 (WA)

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Finesky Holdings Pty Ltd (the applicant) applied for ten mining leases over land held under two exploration licences in the Cape Range area, near Exmouth. The total area applied for covered about 8,250 hectares. The matter was heard by Warden Calder, the Mining Warden under the *Mining Act 1982 (WA)* and ran for seven days. This included a view of the site of a proposed limestone quarry.

Sixty objections were lodged by six objectors in similar terms. The objections raised environmental concerns, and in particular the issue of the potential impact of mining on the Cape Range karst cave system.¹

The Australian Speleological Federation was represented by The Environmental Defender's Office (EDO)(WA) and was the lead objector. The objector called several expert witnesses who gave detailed evidence to the Warden about the unique nature of the Cape Range karst cave systems, its natural and cultural heritage values, and its potential for future entry on the World Heritage Register.

The objector also adduced evidence from an expert on the significance of the area in respect to fauna and the possible adverse impact on subterranean biodiversity, including stygo-fauna² and troglobytes.³ Evidence was also adduced about the possible impact of any proposed mining operation on Aboriginal archaeological sites in the area.

The applicant adduced evidence of a draft notice of intent (NOI) for a proposed limestone quarry and treatment plant. Unlike most mining lease applications the applicant had already completed considerable work, including environmental studies. Apart from surface flora and fauna surveys, downhole surveys had been commenced on the local subterranean fauna in consultation with interested parties.

The applicant submitted that it required all ten mining leases on the basis that given the various environmental issues, the exact location of any mining operation would not be known until further studies (including subterranean fauna surveys) and a formal environmental review by the Environmental Protection Authority (EPA) were completed. Also, the area of the leases was required to give the applicant an opportunity to ensure appropriate buffer zones around the mining operations to minimise any visual impacts.

The applicant relied upon the fact that various State government agencies and local authorities (after a period of consultation and associated reports) had approved the creation of a dual purpose reserve for conservation and mining. The evidence indicated that the area was part of a strategic limestone reserve which had been identified by the State to serve a potential future steel-making industry.

The Warden found,

"... the whole of the area the subject of the ground applied for in all 10 applications is located within a unique karst system which is outstanding on a world scale ... it is highly

1. 'karst' refers to geological formations based on limestone.

2. Stygo-fauna are invertebrates that live in ground water.

3. Troglobytes are fauna living in underground caves, usually invertebrates.

likely that if a mining operation of the type contemplated in the draft NOI is undertaken in the area presently identified in the NOI that there will be an adverse impact upon the karst system and the subterranean fauna in and adjacent to the area of the quarry itself and the associated infrastructure".

The Warden referred to the reserve which is proposed to be created under the *Conservation and Land Management Act 1984* (WA) for the dual objectives of mining and conservation. The Warden did not accept the objector's submission that the Minister should refuse to grant the mining leases on the basis that the stated purpose of the proposed mining operation (building and construction) did not fit the goal of developing a strategic limestone reserve.

The Warden also did not consider it appropriate to look behind the position which the Department of Conservation and Land Management (CALM) and the Department of Minerals and Energy (DME) had taken on behalf of the State with respect to the proposed creation of the dual purpose reserve and the merits of the process which lead to that position being reached. He considered it was properly a question of government policy and the public interest, and not one which was appropriate to be visited and commented upon by the Warden. The Warden noted *"that what really is in issue is a balancing of economic and non-economic interests and rights which are solely within the domain of the State government and relevant ministers"*.

The Warden however agreed with the objector's submission that it would be inappropriate for the Minister to grant all ten mining leases, given the various considerations raised when coupled with the size of the area in question. The Warden also considered because of the prima facie contradiction in purposes, namely, mining and conservation, for which the area was to be reserved, that the applications should be referred to the EPA pursuant to s 38(1)(a) of the *Environmental Protection Act 1986* (WA) before they are determined by the Minister.

In the end, the Warden recommended the grant of a single mining lease over an area of land not greater than that which would be necessary to allow the applicant to conduct the quarrying operations set out in the proposed NOI. The Warden also recommended that the precise location and actual area should be determined by the Minister following advice from the DME and in accordance with any requirements and advice received from the EPA.

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