

Authorisation	Mineral Claim Converted to Lease 213 (Act 1992)
Lease Holder	Mr. Vincenzo Sfeurruzzi
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 Mineral Claim Converted to Lease 213 (Act 1992) (**M(C)L 213**).

This direction takes effect and is in force immediately upon the lease holder being notified of this decision.

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. Mineral Claim No. 213 was first granted on 4 November 1997 and covers two hectares of land situated 54 km NNE of White Cliffs NSW. The authority was granted for the purpose of open cut opal mining and was due to expire on 3 November 2002.
6. On 18 October 2004, Mineral Claim No. 213 was renewed by the Department and was due to expire on 17 October 2009.
7. Following the enactment of the *Mining Amendment Act* 2008, on 15 November 2010 existing claims over land outside a mineral lease claims district were deemed to be mining leases under the Act. Accordingly, Mineral Claim No. 213 was converted to Mineral Claim Converted to Lease 213 (Act 1992) (**M(C)L 213**).
8. Clause 75 of the then Mining Regulation 2010 specified that the minimum security deposit for a mining lease was \$10,000.
9. On 17 October 2014, a delegate of the then Minister wrote to the lease holder in relation to M(C)L 213, proposing renewal for a period of 7 years, including the amended security Condition, Condition 7 (**Security**) increased from \$1,000 to \$10,000.
10. Condition 7 states, *“the lease holder is required to provide and maintain a security deposit to secure funding for the fulfilment of obligations or any kind under the mining lease, including obligations of all or any kind under the mining lease that may arise in the future. The amount of the security deposit to be provided has been assessed by the Minister at \$10,000”*.
11. The lease holder was given 28 days following notification on 14 November 2014, to pay the additional \$9,000 to ensure the assessed \$10,000 security deposit is complied with in accordance with Condition 7 of the authority.
12. On 10 November 2014, the lease holder wrote to the Department seeking an extension of time to pay the required security of \$10,000 until 30 May 2015, however no payment was received.
13. On 15 November 2017, the Department again wrote to the lease holder regarding the renewal of M(C)L 213 and referred to (amongst other things) the outstanding security deposit, advising that further non-compliance may result in enforcement action.
14. On 6 March 2018, the Department renewed M(C)L 213 with an expiry date of 4 November 2022.

15. Upon renewal, Condition 7 remained unchanged, and the lease holder remained liable for the outstanding \$9,000 required to ensure a \$10,000 security deposit is held by the Department in respect to the authority.
16. On 10 September 2018, the matter was referred to the Regulator for investigation.
17. On 21 September 2018, the Regulator wrote to the lease holder warning him that failure to pay the outstanding security by 19 October 2018 would result in escalated enforcement action.
18. On 4 October 2018 and 29 November 2018, the Regulator again contacted the lease holder to discuss the matter and, on both occasions, advised he had no intention of paying the increased security deposit.
19. In this regard, on 12 February 2019, the Regulator issued the lease holder penalty notice No. 3148488375 for the alleged contravention of section 378D(1) of the Act for failing to comply with Condition 7 of the authority.
20. Following its issue, the lease holder subsequently sought a review of the penalty notice by Revenue NSW.
21. Revenue NSW upheld the issuing of the penalty notice and informed the lease holder that the penalty notice was to stand.
22. On 21 March 2019, the lease holder made application to the Department to cancel M(C)L 213. However, on 8 April 2019, the titleholder wrote to the Department requesting the cancellation request be withdrawn.
23. Departmental records confirm that the required security deposit has not been paid by the lease holder in accordance with the authority.

Ground for Cancellation

24. I have reviewed the authority within the context of Part 7, Division 3 of the Act, and I am satisfied that the following ground for cancellation exist.
25. It is alleged that the lease holder failed to pay the required security deposit of \$10,000 in accordance with Condition 7 of the authority.
26. The ground for cancellation is based upon section 125(1)(c) of the Act, in which a person has contravened a condition of authority, being Condition 7.

Representations

27. On 19 July 2019, I wrote to the lease holder inviting him to provide a submission in response to my proposed decision to cancel the authority by Tuesday 20 August 2019.
28. On 19 August 2019, the lease holder provided a response in relation to the proposed cancellation.
29. The lease holder submitted that:

Reasons for decision

- a. he would have paid the security if he had started work on the lease;
- b. he was unable to start work on the lease due to personal and work problems;
- c. he could not start work on the lease due to machinery breaking down; and
- d. due to financial hardship he is unable to pay both the penalty infringement notice and the security deposit balance.

Considerations and findings

30. I am satisfied that the requirements of section 126(1) and (2) of the Act have been met in that the lease holder was notified of my proposed decision to cancel the authority on 19 July 2019 and given at least 28 days to respond.
31. I note the lease holder's submission of 19 August 2019 and I have fully considered the matters raised by the lease holder.
32. I have carefully considered the evidence before me and I am satisfied that there is sufficient evidence to cancel the authority. In this regard the lease holder has failed to provide the security required by condition 7 of the conditions of authorisation for M(C)L 213 and as such the lease holder has:
 - a. contravened a condition of M(C)L 213, which constitutes a ground for cancellation of M(C)L 213 pursuant to Section 125(1)(c) of the Act; and
 - b. contravened Section 378D of the Act, which constitutes a ground for cancellation of M(C)L 213 pursuant to Section 125(1)(b) of the Act.
33. Environmental rehabilitation security deposits that cover the full cost of rehabilitation are required on all mining lease authorisations. This requirement ensures that the State does not incur financial liabilities in the event of an authorisation holder defaulting on their rehabilitation obligations.
34. While I note the lease holder's submission that he is experiencing personal and financial difficulties, and I am sympathetic to his personal circumstances, these factors do not obviate the strict requirements imposed upon the lease holder under the Act.
35. The failure to comply with a condition of the lease carries a maximum penalty of \$220,000 for an individual (\$1.1 million for a corporation) and a further potential penalty of \$22,000 for each day that the offence continues – demonstrating the level of seriousness that Parliament places on lease holders' meeting these requirements.
36. The lease holder in this instance has been made aware of his regulatory obligations on multiple occasions, and the granting of his lease and subsequent renewals were predicated on the fact that he would meet these obligations.
37. In this respect, there have been numerous attempts by the Department over extended periods of time in attempt to have the lease holder meet his legislative obligations and pay the required \$10,000 security as required by condition 7 of M(C)L 213.

Mining Act Cancellation

Reasons for decision



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38. Of concern the non-compliance has been ongoing since 14 November 2014, and the lease holder has proven to be unresponsive to regulatory engagement and has shown an unwillingness to work with the Department to meet his regulatory obligations.
39. I note that as part of its escalated approach the Regulator has taken other enforcement action and issued a penalty infringement notice. However, this action has been not been successful in motivating the lease holder to return to compliance.
40. Of significant concern is that, despite being faced with the ultimate sanction of cancellation, the lease holder has made no attempt to rectify the non-compliance or offer a pathway to return to compliance.
41. In the complete absence of a commitment to return to, and maintain compliance with the Act, it is only appropriate that M(C)L 213 be cancelled.
42. Accordingly, I have determined to cancel authorisation M(C)L 213 under section 125(1)(c) of the Act.
43. The decision to cancel authorisation M(C)L 213 is effective immediately upon the lease holder being notified of my decision.
44. I note that the cancelation of authorisation M(C)L 213 also in no way precludes the Department of Planning, Industry and Environment from taking any other action against the lease holder in respect of the Authority, including the commencement of legal proceedings and the fulfilment of rehabilitation obligations.

Date of decision: **04 September 2019**

A handwritten signature in blue ink, appearing to read 'Anthony Keon', written over a light blue horizontal line.

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.