



OUT17/46187

**FILE NO:** 0712-2016, 0712-2016, 0715-2016, 0768-2016,  
0769-2016, 0073-2017, 0329-2017 and 0335-2017

**TITLEHOLDER:** Far Western Stone Quarries Pty Ltd

**AUTHORISATIONS:** ML 56, ML 57 and ML620

**LEGISLATION:** Sections 125 and 126 of the Mining Act 1992

**DECISION MAKER:** Anthony Keon, Chief Compliance Officer,  
NSW Resources Regulator

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## DECISION TO VARY CANCELLATION DATE

In accordance with section 126(4) of the *Mining Act 1992* (the Act), I, Anthony Keon, having delegated authority from the Minister, have decided to **vary** the cancellation date for **authorisations ML 56, ML 57 and ML620**, to take effect from **15 December 2017**.

## REASONS FOR DECISION

### Legislation

1. Section 125 of the Act that provides that the decision maker may cancel an authority as to the whole or part of the land to which it relates if satisfied that one or more specified grounds have been met.
2. Section 126(4) provides that the cancellation takes effect on the date that the written notice of the cancellation is provided to the titleholder, or such later date as specified in the notice.

## **Background**

3. On 17 August 2017, the Chief Compliance Officer, as a delegate of the Minister for Resources, determined to cancel authorisations ML 56, ML 57 and ML620 effective from 17 November 2017 due to ongoing compliance issues.
4. A staged approach to the cancellation with a lead time of three months was taken in order to promote timely and cost effective rehabilitation of the site by giving the titleholder an opportunity to remove stockpiled material from the site. This action was intended assist with reducing the rehabilitation liabilities on the mining sites.
5. On 25 October 2017 the titleholder provided a submission seeking a three week extension to the cancellation date, citing the loss of a 3 week period in which to transport the product out of the mine due to rain. The titleholder submitted that when it rains the shire closes all black soil roads preventing access to the site.
6. On 10 November 2017, the Chief Compliance Officer declined the request for extension, noting that Far Western Stone Quarries remained in non-compliance with the Act and had still not paid the additional required security.
7. On 13 November 2017, the titleholder provided further submissions in support of his request for deferment of the cancellation date.

## **Submission from the titleholder**

8. On 13 November 2017 the titleholder provided further submission to support his request for a deferment to the cancellation date. The key points of the titleholder's representations are summarised below:
  - a. Following the decision to cancel the authorities the titleholder commenced removing stockpiles. However, during that time Bourke received three good falls of rain, resulting in three weeks of lost carting time. When it rains out at Bourke the shire close all black soil roads and access to the mine is cut off.
  - b. The carrier is working about 12 hours a day and moving approximately 250 tonnes per day. The titleholder estimates that had it not rained about 5,250 tonnes of product would have been removed in that three week period.
  - c. In the period before the rain the carrier had moved 4,800 tonnes from the mine to Bourke. This amount added to the amount above would have seen about the 10 to 12 thousand tonnes we estimated earlier removed.

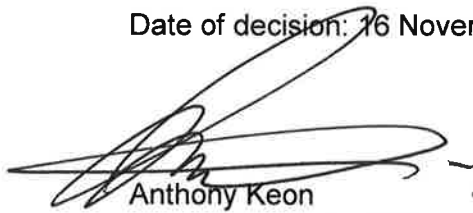
- d. In addition to the carting of product from the mine site they have been carrying out rehabilitation work which is more effective once the material has been removed from the site. This allows the operator more freedom to do his filling in of voids and pits
- e. The excavator driver was also stopped for 3 weeks due to the rain but prior to the rain he was making good progress in his restoration work. He is back on site again now but this week has seen a lot of wind which makes working very difficult
- f. The titleholder estimates that the full removal and sale of the stockpiles will result in about \$180,000.00 (after paying the carrier) for restoration work.

## **Considerations and findings**

- 9. I note that the titleholder is not contesting the original decision to cancel the authorities, and is rather seeking a three week deferment to the date on which the cancellation takes effect.
- 10. I remain significantly concerned that multiple contraventions of the conditions of the authorities and breaches of the Act have occurred and that the titleholder remains in non-compliance with the Act.
- 11. Allowing the titleholder an opportunity to remove the stockpiles, while assisting with the rehabilitation process, must be balanced against allowing the continued operation of the authorities in non-compliance with the Act. Notably the anticipated outcomes need to be heavily weighted in terms of meeting the objects of the Act and the best outcomes for the State.
- 12. In this respect I note that a significant proportion of the rehabilitation costs associated with the authorities lies with the removal or redistribution of the existing stockpiles.
- 13. Having regard to the Objects of the Act, and in particular the need to recognise and foster the significant social and economic benefits to New South Wales that result from the efficient development of mineral resources, I am of the view that it would be preferable for the stockpiles to be removed from the site - rather than requiring the extracted minerals to be rehabilitated back into the land from which it was extracted. In this respect I also note that liabilities in relation to royalties payable to the State are enlivened on the extraction of the material, so in this instance the titleholder is already required to pay royalties on the stockpiled material.
- 14. I also note that the titleholder has given a commitment to use the funds generated from the removal and sale of the stockpiles for the remediation of the site.

15. The continued removal of stockpiles will then benefit rehabilitation outcomes, and the State, in two key ways: by reducing the overall liability through its removal, and providing a revenue source for further rehabilitation works to occur.
16. Accordingly, I have determined to vary the effective cancellation date until 15 December 2017 to assist with rehabilitation outcomes for the site.
17. However, I must reinforce the need to uphold the regulatory regime and ensure that the Act is complied with. As the titleholder remains in non-compliance the balance of considerations will rapidly turn in favour of upholding the law. As such, I will not be open to considering any further requests for deferment beyond this date.

Date of decision: 16 November 2017



Anthony Keon  
Chief Compliance Officer  
Resources Regulator