

**IN THE MINING WARDEN'S COURT  
HELD AT ST LEONARDS  
ON FRIDAY 22ND NOVEMBER 1996  
J A BAILEY, CHIEF MINING WARDEN**

**CASE NO. 1996/56  
CASE NO. 1996/57**

**Application by Leslie Trevor Hill for Machinery Approval  
Claim No. 11208**

**Application by Leslie Trevor Hill for Wet Puddler Approval  
Claim No. 11208**

**DECISION:**

**BENCH:** Mr Hill has both an application to open cut claim number 11208 and an application for an approval for a wet puddler on claim 11208.

Reports have been submitted by officers of the Department of Mineral Resources concerning these applications. Subject to certain conditions, which, in the case of the application to wet puddle, such conditions are somewhat stringent, no objections have been lodged by those officers.

In respect of adjoining claimholders, there has been one claimholder who has objected - that is Ms Margaret Abel, claimholder of 22413. She was not present at the hearing of the application - a Mr J Schnitzenbaumer appeared as agent on her behalf. Mr Schnitzenbaumer advised the Court that there is a current mining agreement between himself, Ms Abel and Ms D Fuller.

By way of background, Mr Hill's attempt to wet puddle on this claim has had a somewhat turbulent history. On 28/5/96 he was granted a permit. After that approval, a somewhat belated objection was received by Ms Abel. Meetings were held between the permit holder, officers of the Department of Mineral Resources and representatives of Ms Abel - there was no resolution. During the period of attempting a resolution, Mr Hill ceased wet puddling.

Ultimately, Mr Hill surrendered the permit granted on 28th May 1996 and made a fresh application, attaching to that application an operational plan for both the wet puddling and the open cut on claim 11208. This operational plan clearly indicates the applicant proposed an operation dramatically different to the first operation undertaken. I can only assume this change was the result of discussions following the first objection by Ms Abel.

On 11/11/96 Mr David Bedford, Senior Inspector of Mines prepared a report on the proposal. A copy of that report was forwarded to Ms Abel before the hearing date. In that report, Mr Bedford supported the application, subject to what might be considered stringent conditions.

Mr Schnitzenbaumer, on behalf of Ms Abel, indicated there was no objection to the matters raised in Mr Bedford's report and that the only objection to both the wet puddler application and the "open cut" application was that the current survey of claim 11208 is incorrect.

No doubt there is a limit to the number of reasons to object to a wet puddler on site - most objections would be a concern by adjoining claimholders of interference with the operation of those adjoining claims. Mr Bedford has addressed matters of that nature in his report.

The objection by Ms Abel is a somewhat curious one - for if the opinion put forward on behalf of Ms Abel is correct, then Ms Abel is in fact not an adjoining claim holder, rather her claim would adjoin and butt up against a piece of land which is not the subject of any claim - consequently she could not have any fears of those matters alerted to in the report of Mr Bedford.

Perhaps it would not be incorrect to assume Ms Abel is objecting to the survey of the claim simply because she feels strongly about exactness when it comes to the surveying of claims. It is however, not important to ascertain the reason she is

objecting to the survey - an aspect of determining whether approval should be given to the application is whether the approval is given over an area which is in fact the actual claim and not to an area which is outside that claim.

Mr Bielenberg, a Surveyor, gave evidence on behalf of the applicant. He received a document prepared by the Mining Registrar indicating the location of Mineral Claim 11208. With that as a guidance, he resurveyed that claim and prepared that survey on 26/8/96. Both the document prepared by the Registrar and the survey prepared by Mr Bielenberg were marked exhibit "1" in the proceedings.

He gave evidence of finding posts to assist in his survey. When on site, he placed one post in a position which he considered correct, having regard to co-ordinates and distances given to him by the document prepared by the Registrar and also by the existence of pegs already in certain positions. There was little variation in the distances and co-ordinates of Mr Bielenberg's survey to that outlined by the Registrar.

An on-site view of the area was conducted before the conclusion of Mr Bielenberg's evidence. It was apparent that Mr Bielenberg's answer of "impossible", to Mr Schnitzenbaumer's question concerning Mr Bielenberg's survey being 22 metres out, was correct. This was reinforced later in Court when Mr Bielenberg answered questions concerning maps of claims in the general vicinity of 11208, prepared in 1980, 1985-86 and the present map. Copies of these maps were marked exhibits 2, 3 and 4.

It appears from evidence given by Mr Schnitzenbaumer that he is basing his claim as to the survey being incorrect, partly upon the existence in the field of a very old piece of timber which is in the ground at an angle far less than 90 degrees - such piece of timber having nothing attached to it or any other indication that it was in fact ever used as a peg in respect of claim 11208 or any other claim.

A witness Doris Fuller gave evidence objecting to the application. Although giving some evidence of friction between the parties, she could throw very little light on the

question of the accuracy of the survey. It appears it is her opinion that the Department of Mineral Resources ought to have commissioned another surveyor to survey the claim.

On the evidence before me, I am not of the opinion that the survey by Mr Bielenberg is inaccurate. Furthermore it is my opinion that the raw data supplied to Mr Bielenberg for the purposes of that re-survey, that is the maps of the claim kept by the Mining Registrar, is not inaccurate to such a degree that there is an error of 22 metres in the survey.

It is my opinion on the evidence that the re-surveyed claim is accurate and that the application to both wet puddle and to use machinery on claim 11208 should be approved.

Conditions of these approvals are itemised in the formal approval document.

  
J A Bailey  
Chief Mining Warden

Copy: Mining Registrar  
Lightning Ridge