



**FILE NO:** 712-2016, 713-2016, 715-2016

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

**AUTHORISATIONS:** ML56 (1973), ML57 (1973), ML620 (1973)

**LEGISLATION:** *Mining Act 1992* – Section 240AA

**DECISION MAKER:** Lee Shearer – Chief Compliance Officer  
As delegate of the Secretary of the Department of Industry

## SECTION 240AA DETERMINATION

As authorised by section 240AA of the *Mining Act 1992*, I, Lee Shearer, having delegated authority from the Secretary administering the Mining Act, direct Far Western Stone Quarries Pty Ltd to:

**Immediately suspend all mining operations under authorisation numbers ML56 (1973), ML57 (1973), and ML620 (1973), with the exception of any activities undertaken to rehabilitate the mining site, and provided that no minerals are removed the site.**

The direction takes effect and is in force immediately upon Far Western Stone Quarries Pty Ltd being notified of this decision. The suspension remains in force until the suspension notice is withdrawn by written notice of the Secretary or delegate.

## REASONS FOR DECISION

### Legislation

1. Section 240AA of the Act provides that:
  - (1) The Secretary may, by written notice (a **suspension notice**), direct a responsible person to suspend (for such period as is specified in the direction or until further

notice) all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations if the Secretary considers that:

- (a) circumstances exist that could constitute a ground for cancellation of the authorisation under section 125 (1) (b)–(g), 203 (1) (b)–(e) or (h) or 233 (1) (b)–(d),

2. The Section provides that before giving a suspension notice, the Secretary must give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice.

## **Background**

3. Far Western Stone Quarries Pty Ltd (“**FWSQ**”) (ACN 000 734 341) is the holder of Mining Lease 56 (1973), Mining Lease 57 (1973) and Mining Lease 620 (“**the authorisations**”).

4. FWSQ is engaged in the extraction of Gypsum, and trades under the business name, ‘Bourke Gypsum Supplies’.

5. FWSQ currently has lodged a security deposit of \$1,000 in respect of each of the authorisations.

6. On 27 July 2016, the Department of Industry, Division of Resources and Energy (“**DRE**”) issued FWSQ with a written notice in accordance with Section 261B of the Act, indicating that as of 31 July 2016 the security deposit requirements under the authorisations had been assessed and increased as follows:

**ML56** – from \$1,000 to \$63,000

**ML57** – from \$1,000 to \$35,000

**ML620** – from \$1,000 to \$12,000

7. The notice provided that the assessed security was required to be lodged with the Department within 42 days, namely by 12 September 2016.

8. FWSQ failed to lodge the assessed security as required and DRE referred the matter to the Resources Regulator for investigation on 7 November 2016.

9. On 8 November 2016, the Resources Regulator wrote to FWSQ and advised it that a failure to lodge the assessed security is a contravention of a condition of the authorisations, which constitutes an offence under Section 378D of the Act. The correspondence provided that the matter had been escalated, and that FWSQ had 30 days in which to lodge the assessed security or further action would be considered.
10. On 15 November 2016, FWSQ's Director, Mr Antony Martin telephoned Mr Justin Quinn, Senior Project Officer, Resources Regulator. Mr Martin advised that FWSQ was not in a financial position to lodge the assessed security. He also indicated that rainfall received during 2016 had made it very difficult for FWSQ to undertake its planned rehabilitation works.
11. On 20 December 2016 I forwarded a written notice to FWSQ in accordance with Section 240AA(2) of the Act, indicating that I had formed a preliminary view that its failure to lodge the assessed security constituted a ground for the cancellation of the authorisations under section 125(1)(c), and that it was appropriate to issue a direction to suspend operations. The notice invited FWSQ to provide submissions in response.
12. FWSQ did not initially provide a written response to my above invitation to provide submissions. On 27 January 2016, Mr Quinn telephoned Mr Martin. Mr Martin advised that he was not intending to provide a response.
13. On 30 January 2017, Mr Quinn forwarded an email to Mr Martin requesting that he confirm his position in writing. Mr Martin provided the following response:

*Good afternoon Justin,*

*With respect to the letter from Lee Shearer. As I said to you I can not add a great deal to any submission beyond what I have already stated.*

*Just to say again that this business is not financial without help from my main business, we have been keeping the business going because it employs 2 people at Bourke. During the past 10 months we have not moved any product which means no income for the business. Gypsum mining is so dependant on*

*seasons and commodity prices that you do not know when people may buy your product.*

*As I think I have mentioned before it is my intention to close this mine down. In closing the mine down we would like to transport to Bourke the product already mined which will allow us to regenerate the mine site. This process takes time because we have not got the money required to pay to deliver all to Bourke we need to wait till we get a sale for the product to pay the carrier. Also at the present time my man who operates the excavator at the mine has had a heart operation and is off work for the foreseeable future.*

*I would like to state that it is my intention to leave the mine in the state required by your department, but we need the time to do this.*

*I would ask that you be patient with us and allow us to fulfill the requirements as soon as we can.*

## **Considerations**

14. The increased security deposits (totalling \$110,000) have not been lodged, in contravention of the conditions of the authorisations, and correspondingly section 378D of the Act.
15. I have closely considered the financial difficulties outlined by FWSQ, particularly that any direction to suspend operations will seriously jeopardise the employment provided to two people.
16. However, FWSQ's failure to lodge the required security constitutes a continuing contravention of clause 131 of the authorisations. Any contravention of a condition of the authorisations constitutes an offence under Section 378D of the Act. The offence carries a maximum penalty of \$1,100,000 for corporations, and an additional \$110,000 for each additional day that the offence continues. This penalty demonstrates the importance that the community places on ensuring that authorisation holders comply with their conditions of title.
17. I have also considered that the site requires significant rehabilitation, and that the amount of security outstanding is sizeable; a total of \$107,000.

18. 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. Notably FWSQ has lodged less than 3 percent of the required security.
19. There is an unacceptable risk that the community will be burdened with FWSQ's rehabilitation costs if it is permitted to continue its mining operations.
20. Contravening a provision of the Act or a condition of the authorisation constitutes grounds for the decision-maker to cancel an authorisation, pursuant to section 125(b) and (c) of the Act.

## **Conclusion**

21. I am satisfied that procedural fairness has been afforded to FWSQ and in accordance with section 240AA(2) of the Act notice of the proposed suspension was given to FWSQ with a reasonable opportunity to make representations in response.
22. I note the verbal representation made to Mr Justin Quinn by FWSQ and the written submission of 30 January 2017. I have considered those representations, together with the Objects of the *Mining Act 1992*.
23. Having regard to the material before me, I am satisfied that circumstances exist that constitute a ground for cancellation of the authorisations under section 125(1)(C) of the Act. Accordingly, I have determined to suspend mining operations until such time as FWSQ can regain compliance with the Act.
24. The suspension notice will prevent FWSQ from creating any further disturbance at the site and increasing any rehabilitation liability, and from conducting any commercial activities until they can regain compliance with the Act.
25. However, I note FWSQ representations that they intend to rehabilitate the site. The suspension notice has been drafted to permit activities directly relating to the rehabilitation of the site, and thereby reducing the current rehabilitation liability. However, in this respect minerals are not permitted to be removed from the site, as any stockpiles should be used for rehabilitation purposes.

26. Consideration will be given to revoking the suspension should the required additional security deposit of \$107,000 be fulfilled.
27. However, please note that should FWSQ fail to provide the required additional security in full by **30 April 2017**, consideration will be given to further enforcement action, including the cancellation of the authorisations.
28. The suspension notices also in no way precludes the Resources Regulator from taking any other action, including the commencement of legal proceedings in relation to the offence under section 378D of the Act .
29. Accordingly, I have determined to direct Far Western Stone Quarries Pty Ltd to suspend all operations under authorisation numbers ML56 (1973), ML57 (1973), and ML620 (1973).

Date of decision: 24 February 2017



Lee Shearer  
Chief Compliance Officer  
Resources Regulator

## **WARNING AND INFORMATION ABOUT THIS NOTICE**

- It is an offence under section 240C of the Mining Act to fail to comply with this direction.
- The maximum penalty for this offence is, for a corporation, \$1,100,000 and a further \$110,000 for each day the offence continues, and, for a natural person, \$220,000 and a further \$22,000 for each day the offence continues.
- If you fail to take the measures specified above, the Minister may take any action necessary to give effect to the direction including authorising another person to take those measures and recover the costs and expenses so incurred from you, or applying to the Land and Environment Court for an injunction directing you to comply with this direction.
- The serving of this direction and the matters required of you pursuant to this direction in no way preclude, hinder or otherwise restrain the Department from taking further action against you including by commencing legal proceedings.
- This notice is issued under section 240AA of the Mining Act.
- The words and expressions used in this direction have the same meaning as they have in the Mining Act.