

Authorisation	Exploration Licence No. 8967 (Act 1992)
Licence holder	Kris Hetherington
Legislation	Section 125 and 380A of the <i>Mining Act 1992</i>
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Department of Regional NSW

DIRECTION TO CANCEL AUTHORITY

As authorised by Section 125 of the *Mining Act 1992* (**Mining Act**), I Anthony Keon, having delegated authority from the Minister, have decided to cancel Exploration Licence No. 8967 (Act 1992) (**EL 8967**).

This direction takes effect on **17 May 2021**.

REASONS FOR DECISION

Legislation

1. Section 125 of the Mining 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) of the Mining Act sets out the grounds for cancellation of an authority. This includes if the decision-maker is satisfied that the holder of the authority has contravened a provision of the Mining Act (whether or not the person is prosecuted or convicted of any offence arising from the contravention)¹.
3. Section 380A(1)(c) of the Mining Act provides that a decision to cancel a mining right (including an exploration licence) can be made on the ground that, in the opinion of the decision-maker, a holder of a mining right is not a fit and proper person.
4. For the purposes of determining whether a person is a fit and proper person, section 380A(2) of the Mining Act specifies what matters the decision-maker may take into consideration (but without limiting the matters that can be taken into consideration for that purpose). This includes but is not limited to the following:

¹ Section 125(1)(b) *Mining Act 1992*.

- whether the person or (in the case of a body corporate) a director of the body corporate or of a body corporate has compliance or criminal conduct issues².
 - the person's record of compliance with relevant legislation (established to the satisfaction of the decision-maker)³.
 - Whether, in the opinion of the decision-maker, the person is of good repute⁴.
5. Section 126 of the Mining Act also 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 a notice of proposed cancellation that contains details of the grounds for the proposed cancellation, and any such representations have been taken into consideration.
6. Section 363(1) of the Mining Act provides that the Minister may delegate any functions conferred under the Mining Act to another person; and the Minister has delegated the functions to cancel an authority under section 125 of the Mining Act to the Executive Director of the NSW Resources Regulator (**Regulator**).

Background

7. On 9 April 2020, EL 8967 was granted to Kris Hetherington (the **titleholder**) to prospect for Group One (1) minerals or a term of six years, expiring on 9 April 2026.
8. EL 8967 is located about 25km South-East of Wellington and is 12 units in area.
9. In November 2020, the Regulator commenced an investigation into EL 8967.
10. On 15 December 2020 and 10 February 2021, a joint inspection of EL 8967 was conducted by Inspectors of the Regulator, NSW Police and representatives from Water NSW to monitor compliance against licence conditions, and other legislative requirements.
11. Arising from those inspection the Resources Regulator identified a number of compliance concerns.

Proposed Grounds for Cancellation

12. On 1 April 2021, I issued a notice of proposed cancellation of EL 8976 to you. This notice outlined in detail the grounds for cancellation relied upon in proposing cancellation.
13. In short, these grounds included the following:

² Section 380A(2)(a) *Mining Act 1992*.

³ Section 380A(2)(c) *Mining Act 1992*.

⁴ Section 380A(2)(f) *Mining Act 1992*.

Table 1: Grounds for cancellation

#	Grounds for cancellation	Particulars
1	Contravene a provision of the Mining Act or Mining Regulation (section 125(1)(b) of the Mining Act)	20 November 2020 – Mining a mineral without authorisation – use of mini excavator on EL 8967 to aid retrieval of gold, a contravention of section 5 of the Mining Act.
2		9 February 2021 - Mining a mineral without authorisation – use of a powered water pump on EL 8967 to aid retrieval of gold, a contravention of section 5 of the Mining Act.
3	Fit and proper person consideration (section 380A(1)(c) of the Mining Act) <ul style="list-style-type: none"> Compliance with relevant legislation (section 380A(2)(c) of the Mining Act) 	Refer to Grounds 1 and 2. Mining a mineral without authorisation, contraventions of section 5 of the Mining Act.
4		21 February 2021 – publication of a video on YouTube intended to threaten and intimidate an Inspector appointed under the WHS(MPS) Act, a contravention of section 190 of the <i>Work Health and Safety Act (WHS Act)</i> .
5	Fit and proper person consideration (section 380A(1)(c) of the Mining Act) <ul style="list-style-type: none"> Compliance or criminal conduct issues (section 380A(2)(a) of the Mining Act) 	By virtue of the contravention of ‘relevant legislation’, the contraventions of section 5 of the Mining Act and section 190 of the WHS Act constitute compliance or criminal conduct issues.
6	Fit and proper person consideration (section 380A(1)(c) of the Mining Act) <ul style="list-style-type: none"> Not of good repute (section 380A(2)(f) of the Mining Act) 	Publication of YouTube videos which display improper, inappropriate and unacceptable statements and behaviour and conduct unbecoming of a licence holder. This includes the threats and intimidatory comments referred to at Ground 4.

Representations

- In accordance with section 126(1) of the Mining Act, the notice of proposed cancellation invited the titleholder to provide a submission in response to my proposed decision to cancel EL 8967. Any submission was due by no later than 5.00pm on 5 May 2021.
- On 3 April 2021, the titleholder responded by email stating:

“your treasonous foreign owned corporation has committed fraudulent activities and extortion under USCS title codes, your corporation has and committed extortion and theft of crown property, as a foreign corporation you are committing misprison of treason which constitutes as treason under the law of belligerent occupation. You are in violation of Nuremberg code section 4. Now your attempts to further action against a crown sovereign person has been duly noted and I hope you are well aware of not only violation of the privacy Act 1988 ,also violation of the bio security Act 1995 article 6, as well as theft of crown property as well as extortion of monies causing harmful action against a crown. I hope you are well aware that the death penalty still stands in this nation. I warn you that

any further attempts to cause measurable harm upon a crown sovereign person will result in a summons to the international common law court and will face trial for your actions.”

16. On 5 April 2021, the titleholder emailed the Regulator a link to a publicly available YouTube video titled, ‘NSW mining regulator, NSW water board...’. In this video the titleholder alleged (amongst other things) various contraventions of Commonwealth and International laws; and gave the Regulator official notice to remedy the situation.
17. I also note that numerous other videos have been published on the YouTube channel ALLURE GOLD Kris Hetherington. This includes, amongst others:
 - a. Video titled, ‘13 days to go for remedy, 13 subpoena a freshly printed, balls in your square’, made publicly available on YouTube on 7 April 2021. In this video the titleholder made demands that, unless remedies are made within 13 days, subpoenas will be issued to all parties concerned for the matter to be heard in the International Common Law Court.
 - b. Video titled, ‘the magistrate is going to wish they never asked me to play’, made publicly available on YouTube on 13 April 2021. In the video, the titleholder alleges (amongst other things) belligerence and deception by corporations and government bodies.
18. No further written submissions have been received in response to my proposed decision to cancel EL 8967.

Considerations and findings

19. I am satisfied that the requirements of section 126(1) and (2) of the Mining Act have been met, in that the titleholder was notified of my proposed decision to cancel EL 8967 on 1 April 2021 and given 28 days to respond.
20. I have carefully considered all the information before me and I have given due regard to the following:
 - a. The inspections conducted on 15 December 2020 and 10 February 2021.
 - b. The recorded of interview conducted with the titleholder on 10 February 2021.
 - c. The titleholder’s email correspondence of 3 and 5 April 2021 sent to the Regulator.
 - d. The YouTube channel ALLURE GOLD Kris Hetherington, which included amongst others, the following videos:
 - i. ‘Good morning, working on the lease project’ – 21 November 2020.
 - ii. ‘New home for the next few years’ – 21 November 2020.
 - iii. ‘A warning message for NSW mining regulator’ – 21 February 2021.
 - iv. ‘NSW mining regulator, NSW water board ...’ – 5 April 2021.
 - v. ‘13 days to go for remedy, 13 subpoena a freshly printed, balls in your square’ – 7 April 2021.

- vi. 'The magistrate is going to wish they never asked me to play' – 13 April 2021.

21. Having carefully regarded the above information, I am satisfied that the following grounds for cancellation have been made out.

Contravene a provision of the Act or Regulation – section 5 offences

22. I am satisfied that the titleholder has conducted activities not in accordance with his authorisation in relation to two separate offences, and as such the titleholder has contravened section 5 of the Act. This constitutes grounds for cancellation under section 125(b) of the Act.

23. Details of the titleholder's contraventions of section 5 of the Act are set out below:

- a. Section 5 of the Act states:

"A person must not prospect for or mine any mineral except in accordance with an authorisation that is in force in respect of that mineral and the land where the prospecting or mining is carried on".

- b. On 15 December 2020 and 10 February 2021, a joint inspection of EL 8967 was conducted by Inspectors of the Regulator, NSW Police and representatives from WaterNSW to monitor compliance against licence conditions, the Act and Regulation.
- c. The inspection on 15 December 2020 identified an area of surface disturbance approximately 30 metres x 30 metres that had been excavated by a small 'dingo' powered excavator to a depth of approximately 15 centimetres. The area described also had topsoil and waste rock material spread over areas in the immediate vicinity of the excavated ground.
- d. Following the inspection, Inspectors identified a YouTube video on the titleholder's channel "Allure Gold" titled, "Good morning, working on the lease project", dated 21 November 2020. The video records the titleholder describing the area being excavated by a small "dingo" digger to assist with the detection of gold.
- e. The inspection on 10 February 2021, further identified a 'high banker' sluice connected to a petrol-powered water pump. The pump was used to extract water from Burrendong Reservoir to the 'high banker' sluice to wash dirt and rock material taken from EL 8967 for processing of gold.
- f. A voluntary record of interview conducted with the titleholder on 10 February 2021 confirmed his use of the dingo excavator at two locations on EL 8967 and a petrol-powered water pump and 'high banker' sluice for the purpose of extracting gold.
- g. No approval had been granted by the Department to undertake the aforementioned mining activities identified during the inspections.
- h. As a result of these activities, on 20 April 2021 the Resources Regulator issued two penalty notices for '*Mining or prospecting without authorisation*':
- i. penalty number 3149902260 in the amount of \$2,500 was issued for the use a 'dingo' mini excavator (powered) on EL 8967 to remove the top surface layer of material to allow a metal detector to better retrieve gold.

Reasons for decision

- ii. penalty number 3149902279 in the amount of \$2,500 was issued for the use of an Onga water pump (powered) and hoses to extract water from Lake Burrendong to wash dirt material in a high-banker to retrieve gold.

Fit and Proper Person Considerations – section 380A of the Act

24. I am satisfied that the titleholder is not a 'fit and proper person' under section 380A of the Act, which is a ground for cancellation under section 125 of the Act.
25. For the purposes of determining whether a person is a fit and proper person, section 380A(2) of the Act specifies what matters the decision-maker may take into consideration (but without limiting the matters that can be taken into consideration for that purpose). This includes, but is not limited to, the following:
 - a. whether the person or (in the case of a body corporate) a director of the body corporate or of a related body corporate has compliance or criminal conduct issues⁵.
 - b. the person's record of compliance with relevant legislation (established to the satisfaction of the decision-maker)⁶.
 - c. whether, in the opinion of the decision-maker, the person is not of good repute⁷.
26. Under section 380A a person or body corporate has 'compliance or criminal conduct issues'⁸ if the decision-maker is satisfied that the person or body corporate has contravened any relevant legislation, whether or not the person or body corporate has been prosecuted for or convicted of an offence arising from the contravention.
27. 'Relevant legislation'⁹ includes, amongst others, the *Mining Act 1992* and the work health and safety legislation.

Compliance with relevant legislation – Mining Act

28. By virtue of the two contraventions of section 5 of the Act as set out at point 23 above I am satisfied that the titleholder has contravened relevant legislation. This provides grounds under section 380A(2)(c) for cancellation under section 125 of the Act.

Compliance with relevant legislation – work health and safety legislation

29. I am satisfied that the titleholder has contravened section 190 of the Work Health and Safety Act 2011 (**WHS Act**), in relation to the offence of threaten or intimidate an Inspector. This provides a ground for cancellation under section 380A(2)(c) of the Act.
30. Details of the titleholder's contraventions of section 190 of the WHS Act are detailed as follows.
 - a. On 9 July 2019, Resources Regulator staff member [REDACTED] was appointed as an Investigator under section 18(2)(c) of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*. As such, [REDACTED] is deemed to be an inspector for the purposes of the WHS Act.
 - b. Section 190 of the WHS Act states:

⁵ Section 380A(2)(a) *Mining Act 1992*.

⁶ Section 380A(2)(c) *Mining Act 1992*.

⁷ Section 380A(2)(f) *Mining Act 1992*.

⁸ Section 380A(3) *Mining Act 1992*.

⁹ Section 380A(7) *Mining Act 1992*.

“A person must not directly or indirectly assault, threaten or intimidate, an inspector or a person assisting an inspector.”

- c. On 10 February 2021, all Resources Regulator Investigators including [REDACTED] identified themselves to the titleholder as inspectors and showed you their Resources Regulator identification that indicated each Investigator was appointed as inspector under the *Mining Act 1992*, the *WHS(M&PS) Act* and the *Explosives Act 2003*. The titleholder was handed the identification card of two of the inspectors and made notes relating to both the front and rear of those identification cards.
- d. On 21 February 2021, following the site inspection and an electronic record of interview with Inspector [REDACTED], the titleholder published a You Tube video titled, ‘a warning message for NSW mining regulator, NSW water board and napfa’, in which he stated (among other things):

*07:25 minutes, “[REDACTED], you and your Mr 6ft 5” f****g 15 stone, I’m gonna throw my weight around, I’m gonna try and bully people. I don’t need to be bullied mate. I’ve had a lot bigger come at me and I’ve had a lot better try at me, and if you want to conduct commerce that’s where it’s going, we’re going to the Hague, O.K. cause I have the support and I have the knowledge and I’m f****n sick of you c***s screwing every little person that tries to actually f****n enjoy themselves, tries to follow their dream even. Oh No, not from a corporate perspective from your point of view.*

.....

*08:48 minutes “So, you’d better brush up on your common law, you’d better brush up on your constitutional law because what your doing is fraudulent and your doing that to your fellow human being and you call yourselves Australians. You’re a bunch of f****g tip rats, that’s all you are ya f****n scum bags and if I see ya in the street ya gonna cop it from me. Don’t like ya’s, you a bunch of f****n pathetic low life sting ray bottom feeding c***s. Go f**k yourselves.”*

- e. I am satisfied that your comments constitute a threat toward an Inspector and were intended to intimidate an Inspector. As such, I am satisfied that you have contravened section 190 of the *WHS Act*, which is a contravention of ‘relevant legislation’.

Compliance or criminal conduct issues

31. I am also satisfied that the contraventions of section 5 of the *Act* and section 190 of the *WHS Act* constitute ‘compliance or criminal conduct issues’ within the meaning of section 380A(3) of the *Act*. Accordingly, these also provide grounds under section 380A(2)(a) for cancellation under section 125 of the *Act*.

Not of good repute

32. I am satisfied, based on the above grounds and other conduct by the titleholder, that he is not a fit and proper person by virtue of section 380A(2)(f) whereby it is my opinion that he is not of good repute.
33. In this respect I have placed considerable weight to the titleholder’s approach to repeatedly publishing public material in the forms of videos which has included threats to inspectors and abusive and offensive comments to other persons and entities, including the following.
- a. On 21 November 2020, the titleholder published a YouTube video titled ‘New home for the next few years’, in which he stated:

03:17 minutes, "You guys know the deal, um, you know if you want to actually come out these ways, all you have to do is just ah get in contact with me, send me an email or um a message and ah just let me know, give me the courtesy. Um as you guys know, I blew up at some guys out here that hadn't done that and hadn't shown me the respect and ah I was very annoyed at it."

.....

04:05 minutes, "There shouldn't be complications in our, in our game with detecting, um and, you know the way to go about it is to be normal, um, and talk to the people that own the leases. No claim jumpin, cause that's only just gonna get a shotgun put in your face, um, and just being cool because it's really nice to be out here where you know, where away from the city and all sorts of complications, um that come with living in the cities. So, I don't want that out here I want it to be a nice place where people can come out here and feel welcome and, ah, you know, it's a very very large lease its nearly 130,000 acres so, um, there is plenty of scope."

- b. YouTube video titled "a warning message for NSW mining regulator, NSW water board and napfa", records further threatening and inappropriate statements as follows:

00:10 minutes, "After having the mining regulator resources mob come in with the police on behalf of a dog act by f****n [REDACTED] and his mate [REDACTED]. They call themselves NAPFA."

.....

00:48 minutes, "extortion from the Government, extortion from the mining Regulator's Resources Department and ah, not too happy about it to be honest. They impose such restrictions upon the little guy that it makes it really f****g awkward for just your average Joe to try and you know, follow his dream. They try to extort money from you for bonds, for this application you can do this, you can't use that and so on and so forth.

I'm just putting it out there that ah, you know these NAPFA c***s have f****n turned around and said Oh look we've lobbied this particular f****n governmental department, we've sent in x amount of submissions, ra ra ra, youse are f****g dumb c***s, you f****n follow the same f****n bullshit path they are, and you expect to get change, you're a bunch of f****g morons."

.....

02:14 minutes, "This is what I put across to the mining resources regulator the other day, and they said what, are you gonna like are you gonna do the same to us, and I said nah I've actually f****n conducted commerce with youse and I'm pretty happy with it at this stage. But here they are they've screwed the screwed me to the f****n hilt, right, made it really awkward, wasn't even allowed to camp in an old fishing hut that was there, oh no, nah that was the only way they could come at me."

.....

03:48 minutes, "I just got f****n railroaded into a point where, you know, what do I chose my happiness and my, and my families happiness over the fact to try and achieve a goal when I've got these guys standing over me carrying on like f****n bullies, cause that's what they are. [REDACTED] from the Mining Regulator, Resources Department, at Mudgee, you and your little team of f****g f*****s are going out there putting your shit on normal, average everyday Australians, from a

*corporate entity point of view and you're f*****g your fellow human being, with no lube, add a f***** 12 inch of that and a bit of sand, happy days, that is where you guys see things from and you justify it by pay cheque and you think that's right. I don't. I'm highly pissed off about it and I'm not going to take youse to the Hague, I just want me f*****n bond back, and if you give me shit, and if you don't give me my f*****g bond back, we're going to the Hague and I'll personally pay for your f*****g airline ticket, cause you c***s are a bunch of f*****n muppets that act underneath this f*****n fraudulent government that f*****n puts their bullshit on the people under some guise that f*****n you know, bedazzles most of the public and you think that that's normal."*

.....

*05:57 minutes, "I'm f*****n sick of you c***s, right, a high banker motor, what so someone can run a sluice, what only in New South Wales, yet you see what floods do to the f*****n river and you know what, if I was to actually have a sluice in the river without that motor and poured dirt through the f*****g thing it's still gonna create the same f*****g deluge down the back end of it, regardless, but you want to persecute the little guy."*

.....

*06:33 minutes, "New South Wales Water Board, you're in the same f*****n boat, cause you're fraudulent as well".*

.....

*06:46 minutes, "So I hope youse f*****n refund my bond cause I would, I was hoping you guys were gonna send me a fine, I was hoping you were gonna send me a court notice, no because your too gutless cause you know what mis-prison of treason and treason constitutes. It's the death penalty."*

.....

*07:11 minutes, "So say goodbye to your families and all the rest of it if you really want to keep f*****n pursuing the small guy and screwing them, cause you've got nothing better to do and you thing that you are justified by that way. [REDACTED], you and your Mr 6ft 5" f*****n 15 stone, I'm gonna throw my weight around and I'm gonna try and bully people. I don't need to be bullied mate. I've had a lot bigger come at me and I've had a lot better try at me, and if you want to conduct commerce that's where it's going, we're going to the Hague, O.K. cause I have the support and I have the knowledge and I'm f*****n sick of you c***s screwing every little person that tries to actually f*****n enjoy themselves, tries to follow their dream even. Oh No, not from a corporate perspective from your point of view."*

c. The YouTube videos were all accessible to the general public on the internet.

34. I further note that the titleholder, in response to my proposed decision to cancel the authority, continued to publish public videos in which the titleholder used offensive and abusive language, including references to the death penalty and public hanging.
35. I consider the titleholders statements and his behaviour to be improper, inappropriate and unacceptable. I also consider the titleholders conduct to be unbecoming of a person who holds an authority under the Act. Accordingly, I have formed the opinion that the titleholder is not a person of good repute.

Conclusion

36. I am satisfied that there is sufficient evidence to cancel EL 8967, in that there are multiple grounds under section 125 of the Act that have been made out to a very high level of satisfaction. This includes that the titleholder is not a fit and proper person.
37. The titleholder has been unresponsive to regulatory engagement and has shown a complete unwillingness to work with the department to meet his regulatory obligations.
38. Of significant concern is that, despite being faced with the ultimate sanction of cancellation of the authority, the titleholder has made little attempt to rectify the identified issues or show any remorse. Instead, the titleholder has continued to take an aggressive, abusive and threatening approach in response.
39. In particular, the threats to an inspector carrying out his lawful duties in a respectful and professional manner, are extremely serious and completely unacceptable. Further, the continued and abusive and threatening comments made against other persons, through publicly posted videos, is also completely unacceptable. This type of conduct strikes at the very heart of a person's fitness to conduct mining activities in NSW.
40. I consider these matters to be serious in nature and warrant the immediate cancellation of EL 8967.
41. Accordingly, I have determined to cancel EL 8967 under section 125 of the Mining act based on the grounds detailed above.
42. This direction takes effect from 17 May 2021.
43. I also note that the cancellation of the authority also in no way precludes the Resources Regulator from taking any other action against the titleholder in respect of the authority, including the commencement of legal proceedings in relation to any of the identified breaches that form the basis of this decision.

Date of decision: **13 May 2021**



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.