

Authorisation	Mining Lease No. 1446 (Act 1992) (ML 1446)
Lease Holder	Macquarie Marble and Lime Pty Ltd (ACN 128 300 658)
Legislation	Section 240AA of the <i>Mining Act 1992</i>
Decision maker	Peter Day Executive Director, NSW Resources Regulator Department of Regional NSW

SECTION 240AA DIRECTION

As authorised by Section 240AA of the *Mining Act 1992* (**Act**), I Peter Day, having delegated authority from the Secretary of the Department of Regional NSW (**Department**), direct Macquarie Marble and Lime Pty Ltd to:

“Immediately suspend all operations under Mining Lease No. 1446 (Act 1992), with the exception of those activities required to maintain a safe workplace, to undertake environmental rehabilitation of the mining lease, or fulfil the obligations contained within the directions under notice NTCE0008309 and NTCE0009633.”

This direction takes effect and is in force immediately upon the lease holder being notified of this decision. The direction remains in force until the suspension notice is revoked or varied by written notice of the Secretary or delegate.

REASONS FOR DECISION

Legislation

1. Section 240AA(1) of the Act provides that the Secretary may, by written notice (**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), or
 - b. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(h), 203(1)(i) or 233(1)(f), in relation to a breach of a direction under section 240 only.

Reasons for decision

2. Section 240AA(2) of the Act provides that before giving a suspension notice, the Secretary is to:
 - a. cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the authorisation;
 - b. give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice; and
 - c. take any such representations into consideration.
3. Section 125(1) of the Act sets out a number of grounds for cancellation which can be relied upon when issuing a suspension notice. These include if the decision-maker is satisfied that:
 - Section 125(1)(b) – the holder of the authority has contravened a provision of the Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), and
 - Section 125(1)(h) – there has been a contravention of a direction under section 240 or 240AA.
4. Section 363(2) of the Act provides that the Secretary may delegate any function under the Act to any person, except this power of delegation or any function delegated to the Secretary by the Minister. The Secretary has delegated the functions to suspend all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations under section 240AA of the Act to the Executive Director of the NSW Resources Regulator.

Background

5. Mining Lease No. 1446 (Act 1992) (**ML 1446**) was first granted on 19 March 1999 for the purpose of extracting dolomite, limestone and phosphates, which are Schedule 1 minerals under the Mining Regulation 2016 (**Regulation**).
6. ML 1446 is situated about 3.62 km west-south-west of Wauchope in the Broken Bargo State Forest, located in the Port Macquarie Hastings LGA.
7. The Broken Bargo State Forest is under the administration of the Forestry Corporation of NSW.
8. On 5 August 2008, ML 1446 was transferred to Macquarie Marble and Lime Pty Ltd, the lease holder, and is due to expire on 19 March 2029.
9. The current directors of Macquarie Marble and Lime Pty Ltd are Mr Christopher 'Wayne' Stokes and Mr Joachim Holder Kretzschmar.
10. No mining has occurred on ML 1446 since 2018.

Grounds for Suspension

Failure to comply with Notice NTCE0008309

13. On 20 May 2021, Notice No. NTCE0008309 was issued by email to Mr Christopher 'Wayne' Stokes as director of Macquarie Marble and Lime Pty Ltd under section 240(1)(c) of the Act.
14. The Notice was issued to determine the adequacy of security held against ML1446 and to address the environmental and safety concerns that exist on ML1446.

The directions specified in Notice No. NTCE0008309 are as follows:

Direction 1

“Engage a suitably qualified independent person(s) to undertake a Rehabilitation Cost Estimate (RCE) for the authorisations (ML1446) in accordance with ESG1: Rehabilitation Cost Estimate Guidelines (June 2017) which utilises the Department’s Rehabilitation Cost Estimate Tool (May 2019). Submit the RCE electronically (along with a completed Form ESF2: Rehabilitation Completion and/or Review of Rehabilitation Cost Estimate) via nswresourcesregulator@service-now.com with the subject title “Response to Notice – NTCE0008309.”

The RCE was to be submitted electronically to the Regulator by no later than **5:00pm on 1 November 2021**.

Direction 2

“Appoint a suitably qualified, experienced and independent person to develop a Rehabilitation Plan and compile a written Report outlining this plan for assessment by the Regulator.

The Plan / Report must include the following:

- A. Outlines Objectives and Completion Criteria for Rehabilitation.*
- B. Identifies key risks and how these will be controlled.*
- C. Includes a Final landform design of the drift including water management and erosion control / management structures.*
- D. Describes what monitoring, maintenance and reporting will be undertaken.*
- E. Include a Trigger Action Response Plan (TARP) for adaptive management of the rehabilitation process.*

The Plan / Report must address the following:

- F. Be site-based performance and risk assessed which considers the overall surface disturbance associated with mining operations.*
- G. The removal of all plant, equipment and associated infrastructure.*

- H. Removal of wastes with details included of disposal at a suitably licensed receiving facility.*
- I. Develop and implement adequate controls to minimise harm to the environment arising from mining activities.*
- J. Identify, from the site-based performance and risk assessments, control actions to be implemented to ameliorate impacts / minimise risk.*
- K. The final landform is to ultimately achieve a perpetual stable which does not present a risk of environmental harm downstream / downslope of the site or a safety risk to the public / stock / native fauna.*
- L. The site (of ML 1446) is to be free from contamination.*
- M. Minimise erosion and take measures that would not require moderate to significant ongoing care and maintenance works.*
- O. Address excessive sediment build-up (from sheet erosion) at the base of slopes.*
- P. Ensure there is no active scouring where the runoff from rehabilitation areas discharges into natural channels.*
- Q. Contour banks are stable and there is no evidence of overtopping or significant scouring as a result of runoff.*
- R. Water management structures to be made safe and retained in a non-polluting state suitable for intended final land use.*
- S. Water quality in water management structures to be consistent with post mining land use.*
- T. Establishment of ground cover.*
- U. Vegetation establishment is consistent with surrounding landscape.”*
15. The Rehabilitation Plan and Report was to be completed and submitted by **5:00pm on 1 November 2021**.
16. In this regard, no response was received from Macquarie Marble and Lime Pty Ltd or Mr Stokes as a director in respect to the directions by the due date specified.
17. Between the 2 and 16 November 2021, the Regulator made several attempts to contact Mr Stokes to ascertain if there were extenuating or mitigating circumstances regarding this non-compliance, however no response was received.
18. On 20 December 2021, the Regulator issued a letter and notice to Mr Stokes under section 248L(4) of the Act, requiring his attendance at Coffs Harbour to participate in a voluntary record of interview regarding this matter and other issues pertaining to ML 1446.

Reasons for decision

19. On 1 February 2022, Mr Stokes attended 36 Marina Drive, Coffs Harbour and participated in a record of interview with Inspectors from the Regulator. During the interview Mr Stokes acknowledged (among other things) that:
- he remains a current director of Macquarie Marble and Lime Pty Ltd and that the company is still active
 - Mr Joachim Kretzschmar is also a current director of Macquarie Marble and Lime Pty Ltd, however he has never been to ML 1446
 - he removed a former director of Macquarie Marble and Lime Pty Ltd who previously managed the site due to civil and commercial matters associated with the company
 - he did not dispute receiving Notice No. NTCE0008309 issued on 20 May 2021 and agreed that he did not attempt to contact the Regulator before or after the due date for compliance
 - he did not respond to this notice because of personal matters over the last 18 months and a lack of funds
 - he did not have the relevant mining experience and or mining expertise required to manage the mine site
 - the current condition of the mine is not his doing but because of how the former director allegedly left it

Failure to comply with Notice NTCE0009633

19. On 1 February 2022, a Notice No. NTCE0009633 was issued to Mr Stokes as director of Macquarie Marble and Lime Pty Ltd under section 240(1)(d) of the Act during a record of interview conducted on this date.
20. The purpose of the Notice is to mitigate the potential risks associated with trespassing and vehicle access to the mine to prevent the illegal dumping of waste.
21. The following direction specified in Notice No. NTCE0009633:
- “Properly and adequately secure the entry point to ML1446 on the Western side of the mine footprint as depicted in the attached map **ANNEXURE A**. This point must be secured to prevent vehicle access. Install an appropriate sign on any barrier or fence erected to alert to the fact that access is prohibited to the public i.e. "KEEP OUT - No Trespassers".*
22. On 22 March 2022, inspectors from the Regulator conducted a site inspection of ML 1446 to determine if the direction specified in the Notice No. NTCE0009633 was complied with.
23. Inspectors observed that inadequate measures were taken to secure the entry point at ML 1446 on the western side of the mine as directed. A fence was observed to be

erected and attached by a tie down strap to an abandoned truck body to form a barricade in front of the entry point to ML 1446.

Representations

29. On 20 April 2022, I wrote to Mr Stokes as director of Macquarie Marble and Lime Pty Ltd in accordance with section 240AA(2) of the Act, inviting submissions in response to my proposed decision to suspend ML 1446. Any submissions were due by no later than **5.00pm on 13 May 2022**.
30. On 13 May 2022, the Regulator received an email with an attached two page submission from Mr Stokes.
31. Mr Stokes' submission contains, amongst other things, the following:
 - Macquarie Marble and Lime Pty Ltd was formed for the operation of lime at Wauchope and was purchased in 2014.
 - Macquarie Marble and Lime Pty Ltd is in a critical financial position and is no longer able to fund the mine project.
 - He has tried to comply with the "orders", some of which require large sums of money to achieve compliance.
 - It was the former director's obligation to comply with all the rules and regulations; however he abandoned the site and any further obligations were neglected.
 - No further mining has taken place on site since the departure of the former director, apart from people taking machinery from the mine.
 - Mr Stokes emailed the department stating he was placing the mine into a hold position and believed no changes to any approvals would apply, except to allow access for the removal of machinery.
 - An abandoned truck body was positioned to block vehicles from entering the mine site. The main entrance gate has been locked using the original gate approved by the 'Forestry Department' when the former director was operating the mine.
 - Mr Stokes requests for a 'further period' to sell the rights to the mine and is currently in negotiations with interested parties.
 - Mr Stokes suggests it could take a further four months to achieve a sale as the interested parties need to come up with the finance.
 - Mr Stokes believes it is in the best interest of the Department to have the mine site continue as a going concern.

Considerations

32. I am satisfied that the requirements of section 240AA(2) of the Act to notify Macquarie Marble and Lime Pty Ltd in writing of the proposed suspension notice have been adhered to.
33. Macquarie Marble and Lime Pty Ltd and Mr Stokes was afforded a reasonable opportunity to make representations and these representations have been fully considered in making my decision.
34. In doing so, I have carefully considered the information before me and I have given due regard to the following:
 - The seriousness of the environmental concerns identified by Inspectors at ML 1446.
 - The failure of Macquarie Marble and Lime Pty Ltd and Mr Stokes to comply with statutory Notices issued under the Act to remediate the environmental concerns referred to.
 - The financial capacity of Macquarie Marble and Lime Pty Ltd to remediate the environmental concerns and to comply with its obligations under the Act and Regulation.
 - The on-going management of ML 1446 having regard to Mr Stokes' lack of mining and operational experience.
35. In making my decision I have also had regard to the objects of the Act, particularly the need to ensure the effective rehabilitation of disturbed land and water; and the need to ensure mineral resources are identified and developed in ways that minimise impacts on the environment (section 3 A(f) and (g) of the Act).
36. I find the offending behaviour by Macquarie Marble and Lime Pty Ltd and Mr Stokes is concerning and demonstrates a comprehensive failure to adhere to fundamental regulatory obligations in respect the Act and Regulation.
37. I considered Mr Stokes' evasive behaviour by ignoring his obligations to comply with Notices NTCE0008309 and NTCE0009633 and avoiding contact with the Regulator is not that of a responsible lease holder.
38. The non-compliances may have been alleviated if Mr Stokes had proactively communicated with the Regulator to discuss possible alternatives or arrangements to complete the directions specified in the Notices.
39. I note Mr Stokes' submissions in respect to the company's financial stress caused by civil agreements he entered into with the former director. This, along with the financial capital required to undertake the environmental remediation works required at ML 1446 has prompted Mr Stokes to sell the mining right to alleviate this financial stress.

Reasons for decision

40. I have also considered Mr Stokes' request for additional time of four months to negotiate the sale of the mining right to prospective buyers prior to making a final decision to suspend ML 1446.
41. However, I note that since writing to Mr Stokes on 20 April 2022 proposing the suspension of ML 1446, the Regulator has not received any correspondence or communication from Macquarie Marble and Lime Pty Ltd or Mr Stokes regarding the sale process.
42. I have also had due regard to financial records and information provided to the Regulator under Notice NTCE0010288 by accountants for Macquarie Marble and Lime Pty Ltd issued under section 248B(1) of the Act on 13 May 2022.
43. The financial records and information were considered to form the Regulator's view of the company's historical and current financial position, including the capacity to fulfil the requirements under the directions issued under Notices NTCE0008309 and NTCE0009633.
44. I am also aware of the extensive compliance history recorded by the Department against Macquarie Marble and Lime Pty Ltd and Mr Stokes. Former regulatory action has been taken by the Regulator for offences sustained under 240C and 248S of the Act, which includes official cautions and penalty infringement notices.
45. I also note that the Regulator is investigating further allegations against Macquarie Marble and Lime Pty Ltd and Mr Stokes under sections 240C and 248S of the Act, which is currently on-going.

Conclusion

46. Having carefully considered the regulatory options available to me, I am satisfied that the information before me warrants the immediate and mandatory suspension of all operations at ML 1446 with the exception of those activities required to maintain a safe workplace, to undertake environmental rehabilitation of the mining lease, or fulfil the obligations contained within the directions under notice NTCE0008309 and NTCE0009633.
47. I am satisfied that Macquarie Marble and Lime Pty Ltd has failed to comply with Directions 1 and 2 in Notice No. NTCE0008309 issued under section 240(1)(c) of the Act to address the rehabilitation and reporting requirements stipulated in the Notice. This constitutes an on-going offence under section 240C of the Act.
48. I am also satisfied that Macquarie Marble and Lime Pty Ltd has failed to comply with the Direction specified in Notice No. NTCE0009663 issued under section 240(1)(d) of the Act to adequately secure the entry point to ML 1446. This constitutes an on-going offence under section 240C of the Act.

Reasons for decision

49. An offence against this section committed by a corporation is also an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation – see section 378F.
50. Therefore, based on the material before me, I am satisfied that circumstances exist that constitute grounds for the cancellation of ML 1446 under section 125(1)(b) and 125(1)(h) of the Act in failing to comply with both notices.
51. The suspension notice takes effect immediately upon Macquarie Marble and Lime Pty Ltd being notified of the decision and will remain in force until such time as the suspension notice is revoked or varied by written notice of the Secretary or delegate.
52. Consideration will be given to revoking the suspension notice once Macquarie Marble and Lime Pty Ltd has complied with all directions specified in Notices NTCE0008309 and NTCE0009633 to the satisfaction of the Department.

Date of decision: 28 June 2022



Peter Day
Executive Director
NSW Resources Regulator

Note: In accordance with its Public Comment Policy, a copy of this decision will be published on the NSW Resources Regulator’s website: www.resourcesregulator.nsw.gov.au

WARNING AND INFORMATION ABOUT THIS NOTICE

- It is an offence under section 240C of the *Mining Act 1992* 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.
- An offence against section 240C may attract executive liability against a director of the corporation, or an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation – section 378F of the *Mining Act 1992*
- 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 – section 241 of the *Mining Act 1992*.
- 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 of Regional NSW from taking further action against you including by commencing legal proceedings.
- The words and expressions used in this direction have the same meaning as they have in the *Mining Act 1992*.