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| Authorisations | Mineral Claim Converted To Lease No. 309 (Act 1992) (M(C)L 309) Mineral Claim Converted To Lease No. 310 (Act 1992) (M(C)L 310) |
| Lease Holders | Mr. Elwyn Barry Dunning Mr. Anthony James Furney Mr. John Frederick Thompson |
| Legislation | Section 125 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 125 of the *Mining Act 1992* (**Act**), I Peter Day, having delegated authority from the Minister, have decided to cancel authorisations Mineral Claim Converted to Lease 309 (Act 1992) (M(C)L 309) and Mineral Claim Converted To Lease 310 (Act 1992) (M(C)L 310), effective from 5 August **2022**.

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

- Section 125 of the 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.
- Section 125(1)(b) of the Act provides that a decision-maker may cancel an authority if they are satisfied that the holder of the authority has contravened a provision of the Act (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
- Section 125(1)(c) of the Act provides that the decision-maker may cancel an authority if the decision-maker is satisfied that the holder of the authority has contravened a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
- Section 125(1)(g) of the Act provides that a decision-maker may cancel an authority if the decision-maker is satisfied that the holder of the authority has failed to use the land the subject of the authority in good faith for the purpose for which the authority

has been granted, or has used the land for a purpose other than for which the authority has been granted.

- e. Section 126 of the 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.
- f. Section 363(1) of the 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

1. On 2 February 2006, Mineral Claim 309 (Act 1992) (**M(C)L 309**) and Mineral Claim 310 (Act 1992) (**M(C)L 310**) were granted to Elwyn Barry Dunning, Anthony James Furney and John Frederick Thompson ('the lease holders').
2. As of 15 November 2010, and in accordance with Clause 106(1) of Schedule 6 of the Act, these mineral claims are taken to be mining leases.
3. Both M(C)L 309 and M(C)L 310 (**the Authorities**) were due to expire on 2 February 2011.
4. M(C)L 309 was granted for mining purposes only (mining plant and associated facilities) and M(C)L 310 was granted to extract Group 1 minerals, copper, gold, lead, silver and zinc.
5. The Authorities adjoin each other, cover an area of approximately two hectares and are located about 24 km south-south-west of Mudgee.
6. On 10 January 2011, an application was lodged to renew the Authorities and a decision remains pending with the Department of Regional NSW (**Department**).
7. Section 117 of the Act provides that the Authorities continue to have effect until the Department decides whether to accept or decline the application.
8. A review of Departmental records confirms Mr Thompson (joint lease holder) is deceased and there is no known will or appointed executor to devolve Mr Thompson's mining right under the Act.

Grounds for cancellation

8. On 18 May 2022, I issued the lease holders a notice proposing the cancellation of the Authorities. This notice outlined the grounds for cancellation relied upon in proposing cancellation.
9. These grounds included a contravention of the following provisions:

Reasons for decision

- a. Mining Lease Condition 22 – ‘Security’
 - b. Mining Lease Condition 4 – ‘Mining Operations Plan (MOP)’
 - c. Mining Lease Condition 5 – ‘Annual Environmental Management Report (AEMR)’
 - d. Annual authorisation fees – section 292C
10. The contraventions referred to above that relate to mining lease conditions [9.a., 9.b. and 9.c.] constitute both a contravention of a provision of the Act and a contravention of a condition of the authority, grounds for cancellation under section 125(1)(b) and (c).
 11. In addition, the failure to use the land the subject of the Authorities in good faith was included as a further ground for cancellation under section 125(1)(g).

Mining Lease Condition 22 - ‘Security’

12. Condition 22 of the Authorities required the lease holders to lodge a joint security of \$14,000 with the Mining Registrar to ensure all obligations under the leases are met.
13. Sub-clause (b) of condition 22 requires the lease holders to pay the security in one of the following forms:
 - a. cash; or
 - b. a security certificate in the form approved by the Minister and given by an authorised deposit-taking institution; or
 - c. in such other form as the Director-General may approve.
11. In a letter dated 23 December 2005, the Department wrote to the lease holders proposing to grant the claims should all holders accept the conditions of both authorisations and pay a joint security of \$14,000.00 that covers both sites. The Department agreed to the security being paid in full over three instalments detailed below:
 - a. Instalment #1 – Prior to granting the claims - \$8,000.00
 - b. Instalment #2 – After 2, ½ years - \$4,000.00; and
 - c. Instalment #3 – After 5 years - \$2,000.00
12. If accepted, the Department requested the lease holders sign the grant of offer and return it with the proposed conditions of authorisations along with the first security instalment of \$8,000.00 within forty-two days of this notification.
13. On 1 February 2006, Mr Thompson accepted the Department’s offer on behalf of all lease holders and the signatories were provided in his response, including confirmation of payment for the first security instalment of \$8,000.00.
14. The Department confirms that the first security payment of \$8,000.00 was received on 2 February 2006.

15. On 10 January 2011, the lease holders lodged an application to renew the Authorities.
16. In a letter dated 5 April 2011, the Department wrote to the lease holders advising that the second security instalment of \$4,000.00 was not paid by 2 August 2008, which constituted a breach of condition 22.
17. The Department requested the payment be made ‘without delay’ to finalise the renewal application for the authorisations under review. In addition, the Department reminded the lease holders that the third security instalment of \$2,000.00 was due on 2 August 2013.
18. A review of Departmental records found that the second and third payments have not been paid in accordance with condition 22, an on-going offence under section 378D(1) of the Act.
19. On 24 July 2020, the Regulator wrote to Mr Dunning advising of the commencement of an investigation into alleged contraventions of the Mining Act recorded against M(C)L 309 and M(C)L 310. The investigation considered (amongst other things) an alleged contravention of condition 22.
20. On 6 August 2020, the Regulator issued Mr Dunning a Notice under section 248B(1) of the Act, reference number NTCE0006026, requiring information and records relevant to the investigation and allegations referred to in the Notice. Mr Dunning was required to provide information in relation to the following questions:
 - “12. Upon the grant of MC309 (subsequently M(C)L309) and MC310 (subsequently M(C)L 310), a security deposit was assessed in the amount of \$14,000 of which \$8,000 has been received, leaving an outstanding balance of \$6,000. Is this information correct?
 13. Why has the outstanding amount of the security deposit not been paid?
 14. Have you previously received Departmental correspondence regarding the outstanding balance of the security deposit?
 15. Are you aware that it is a breach of the title authorisation for the full amount of the assessed security to be deposited?”
21. On 19 August 2020, a submission was received from Mr Dunning in response to the Notice. In this response, Mr Dunning stated,
 - “Q 12. You will get no more money from me as I’ve none left and live below the poverty line. In fact you would have to give me one million to complete the work there before I die...”
 - Q 13. Not informed to me. Don’t have that money anyway.
 - Q14. NO.
 - Q15. Money doesn’t grow on trees – bushes.”

22. The Regulator sustained a contravention of condition 22 against the Authorities, an offence under section 378D(1) of the Act for each authority; and on 20 September 2021, issued an Official Caution, dated 15 September 2021, to all lease holders.

Mining Lease Condition 4 - 'Mining Operations Plan (MOP)'

23. Condition 4 of M(C)L 309 and M(C)L 310 requires mining operations, including mining purposes to be conducted in accordance with a Mining Operations Plan (**MOP**) satisfactory to the Director-General.
24. Sub-clause (3) of condition 4 requires the lease holders to lodge a MOP with the Director-General:
- a. prior to the commencement of mining operations (including mining purposes);
 - b. subsequently as appropriate prior to the expiry of any current Plan; and
 - c. in accordance with any direction issued by the Director General.
25. Departmental records indicate that a MOP was approved from the date of grant until 2 February 2011.
26. A subsequent 'Small Mines' MOP, dated 29 December 2010 was submitted for the period 1 February 2011 to 1 February 2018.
27. In a letter dated 11 February 2011, the Department wrote to Mr Thomson approving this MOP from 2 February 2011 to 1 February 2018.
28. A review of Departmental records confirmed that the lease holders have not lodged a subsequent MOP.
29. On 24 July 2020, the Regulator wrote to Mr Dunning advising of the commencement of an investigation into alleged contraventions of the Act recorded against the Authorities. The investigation considered (amongst other things) an alleged contravention of condition 4 against the Authorities after identifying no new MOP had been lodged with the Department prior to the expiry of the previously approved MOP.
30. On 6 August 2020, the Regulator issued Mr Dunning a Notice under section 248B(1) of the Act, reference number NTCE0006026, requiring information and records relevant to the investigation and allegations referred to in the Notice. Mr Dunning was required to provide information in relation to the following questions:
- “2. *It has been alleged that there is no current approved MOP for M(C)L309 and M(C)L310, is this correct?*
 3. *When did the previous approved MOP expire?*
 4. *Why was a new MOP not prepared and submitted for approval?*
 5. *Are you aware that it is a breach of the title authorisation for mining activity to continue without an approved MOP?”*

Reasons for decision

32. On 19 August 2020, Mr Dunning provided a written submission in response to this notice. In this response, Mr Dunning stated:

“Question 2 Mr Branks tells me he has spent \$7,500 in legal fees but cannot get sense out of anyone. I’ve been to your Maitland Office with Mr Branks.”

Question 3. Mr Branks tells me he does them. I don’t know. Read the last one John Thompson wrote nothing has changed there.

Question 4. I have never received any paperwork and would not know how to do one. Don’t know. John Thompson died that’s why. Mr Branks tells me he has done work. There is nobody interested in gold any more at Hargraves.

Question 5 There was no activity”

33. A review of Departmental Records found that the last MOP approved by the Department for the Authorities expired on 1 February 2018. No MOP was lodged with the Department prior to the expiry date as required under the authorisations.
34. The Regulator sustained a contravention of condition 4 against the authorities, offences under section 378D(1) of the Act for each authority; and on 20 September 2021, issued an Official Caution, dated 15 September 2021, to all lease holders.
35. The MOP remains outstanding.

Mining Lease Condition 5 - ‘Annual Environmental Management Report (AEMR)’

36. Condition 5(1) of the Authorities requires the lease holders to lodge an Annual Environmental Management Report (AEMR) with the Director-General within 12 months of the commencement of mining operations and thereafter annually or, at such other times as may be allowed by the Director General.
37. Condition 5(2) goes on to specify the information required and manner in which the report must be prepared.

2016/17 Report

38. A review of Departmental records found that the lease holders had failed to lodge the AEMR for the period 2 February 2016 to 1 February 2017.
39. On 25 May 2017, the Regulator issued a warning letter to Mr Dunning and Mr Furney for failing to lodge an AEMR for the Authorities by 1 February 2017. They were advised to take immediate steps to lodge the report by 22 June 2017; and failure to do so would instigate escalated enforcement action by the Regulator.
40. On 4 June 2017, Mr Dunning responded to the warning letter stating,

“Received your horrible warning letter before but did not ignore it. I posted it to Mr Russell Branks who lives on the Icely Rd at Orange. Mr Branks, I rang about this latest horror he says he will fix this up he hasn’t been able to get any sense from your Department, gets the bloody run-around, this must cease, your not aware of the facts”.

Reasons for decision

41. On 9 June 2017, the Department received an incomplete and unsigned application for an extension or exemption from reporting from Mr Branks. In his application, Mr Branks sought an exemption from annual environmental reporting for the Authorities that was due on 1 February 2017. Mr Branks provided the following grounds for the Department's consideration:

"This is only a two hectare lease and has a minimum soil disturbance. A lease holder Mr J Thompson is deceased, and an impersonator produced two will's which left all ownership of his belongings to this person. The police eventually became involved and after four years he was convicted for a detention period of two years and a few months. As part of his activities he burnt the house to the ground and with it all of the years of records for Joalbar Mining. On behalf of Mr B Dunning I am attempting to restore as much of the operating procedures as possible. We as a business lost \$100,000 dollars. When I commence operations, then I can see a need for reporting. At the present time I spray the weeds and keep the area secure. I do have a chemical licence. Regards R D Branks."

42. On 15 June 2017, the Department wrote to Mr Banks requesting further information. This included the lease holders' details and a signed and completed declaration.
43. On 19 July 2017, the Department again wrote to Mr Branks requesting additional information, however no response was received, and the exemption was not granted.
44. The Regulator sustained a contravention of condition 5 against the Authorities, offences under section 378D(1) of the Act for each authority; and on 9 November 2017, issued an Official Caution to all lease holders.
45. The AEMR remains outstanding.

2019-20 & 2020-21 Reports

46. On 23 January 2020, the Regulator wrote to the lease holders advising that an AEMR for the authorities was due on 1 March 2020.
47. A subsequent review of Departmental records found that the lease holders had failed to lodge an AEMR for the period 2 February 2019 to 1 February 2020.
48. On 24 July 2020, the Regulator wrote to Mr Dunning advising of the commencement of an investigation into alleged contraventions of the Mining Act recorded against the Authorities. The investigation considered (amongst other things) an alleged contravention of condition 5 against the Authorities.
49. On 6 August 2020, the Regulator issued Mr Dunning a Notice under section 248B(1) of the Act, [reference number NTCE0006026] requiring information and records relevant to the investigation and allegations referred to in the Notice. Mr Dunning was required to provide information in relation to the following questions:

"6. It is further alleged that the 2019 AEMR for M(C)L 309 and M(C)L 310, has not been submitted for review and approval, is this correct?"

Reasons for decision

7. *When was the last AEMR submitted for approval?*
 8. *What date was the last AEMR approved?*
 9. *Why has the 2019 AEMR not been submitted?*
 10. *Provide details of any approved exemptions that excludes M(C)L 309 and M(C)L 310 from the title authorisation's reporting conditions.*
 11. *Are you aware that it is a breach of the title authorisations for the AEMR to not be submitted for review and approval?"*
50. On 19 August 2020, Mr Dunning provided a written submission in response to the Notice. Mr Dunning submitted:
- "Q6. MC310 was only included by Frank Carter because we needed room to move on our tiny block with a depth restriction so we would have room to move. There is no GOLD THERE..."*
- Question 7 Don't know*
- Question 8 Don't know*
- Question 9 No work done.*
- Question 10 How*
- Question 11 John Thompson told me the mine was hopeless days before he died. The mine fills up with water every night..."*
51. Whilst the investigation continued, the lease holders subsequently failed to lodge an AEMR for the period 2 February 2020 to 1 February 2021.
52. The Regulator sustained a contravention of condition 5 against M(C)L 309 and M(C)L 310 under section 378D(1) of the Act for each authority; and on 20 September 2021, issued an Official Caution to all lease holders.
53. The AEMR for both 2019-20 and 2020-21 remain outstanding.

Annual authorisation fees – section 292C

54. Pursuant to section 292C(3) of the Act, it is an offence should the holder of an authorisation fail to pay any annual rental fees and an administrative levy (**authorisation fees**). Payment must be made within the period (of not less than 7 days) specified by the Secretary.

2016 authorisation fees – M(C)L 309

55. Departmental records indicate that the 2016 authorisation fees for M(C)L 309 in the amount of \$200.00 were due on 24 March 2016, however payment was not received until 11 May 2016.
56. On 1 July 2016, the Department wrote to Mr Dunning to advise that the late payment was considered an offence under section 292C(3) of the Act and reminded him of the lease holders' obligations to pay the annual fees by the due date.

2016 authorisation fees – M(C)L 310

57. Departmental records indicate that the 2016 authorisation fees for M(C)L 310 in the amount of \$200.00 were due on 24 March 2016. An overdue letter was sent to Mr Dunning on 30 May 2016.
58. On 1 July 2016, Mr Dunning was sent a warning letter for breaching section 292C(3) of the Act and advised to take immediate steps to pay the outstanding authorisation fees.
59. The outstanding authorisation fees were paid on 4 July 2016, and on 28 July 2016 the Department issued an Official Caution to Mr Dunning for a breach of section 292C(3) of the Act.

2017 authorisation fees – M(C)L 309

60. Departmental records indicate that the 2017 authorisation fees for M(C)L 309 in the amount of \$200.00 were due on 9 April 2017.
61. On 1 August 2017, the lease holders were sent a warning letter for breaching section 292C(3) of the Act and advised to take immediate steps to pay the outstanding authorisation fees.
62. The outstanding authorisation fees were paid on 4 October 2017, and on 7 November 2017 the Regulator issued an Official Caution to all lease holders for a breach of section 292C(3) of the Act.

2017 authorisation fees – M(C)L 310

63. Departmental records indicate that the 2017 authorisation fees for M(C)L 310 in the amount of \$200.00 were due on 9 April 2017.
64. On 1 August 2017, the lease holders were sent a warning letter for breaching section 292C(3) of the Act and advised to take immediate steps to pay the outstanding authorisation fees.
65. The outstanding authorisation fees were paid on 4 October 2017, and on 7 November 2017 the Regulator issued an Official Caution to all lease holders for a breach of section 292C(3) of the Act.

2018 authorisation fees – M(C)L 309

66. Departmental records indicate that the 2018 authorisation fees for M(C)L 309 in the amount of \$200.00 were due on 11 April 2018.
67. On 16 July 2018, the lease holders were sent a late payment reminder letter advising that failure to pay the fees in full by 30 July 2018 would result in escalated enforcement action.
68. On 24 July 2018, Mr Dunning responded in writing, stating,

“Received a letter today demanding money on the old defunct mine site which has not earned a cent in its life. We were not allowed to dig it deeper years ago, there is a depth

clause inserted by Frank Carters conditions, so we wasted out time and money on this tiny lease. I'm owed \$300,000 which I'll never recover. I'm 83 now and the only thing I've got now is my old age pension. My doctor wonders why I'm still here. John Thomson our mine manager died on 30th August 2011.

...

We haven't got a environment that a business can survive in. The last words of John Thompson at the mine site were look at all the work I did for nothing. Could make one cry.

...

Tony Furney sold out to Russell Branks of Icely Road Orange long before John Thompson died. I don't know anything about this payment. I have to contact Russell Branks and see what he thinks.

...

I got a phone call this morning from Russell Branks of Orange. He says the bloody rents are paid so it seems its just another Goon Show. You will be hearing from Russell."

69. The outstanding authorisation fees were paid on 6 September 2018.
70. On 15 March 2019, the Regulator issued Mr Dunning a penalty notice and on 8 April 2019 the Regulator issued Mr Furney a penalty notice; both in the amount of \$500 for breaches of section 292C(3) of the Act. No formal action was recorded against Mr Thompson.

2018 authorisation fees – M(C)L 310

71. Departmental records indicate that the 2018 authorisation fees for M(C)L 310 in the amount of \$200 were due on 11 April 2018.
72. On 16 July 2018, the lease holders were sent a late payment reminder letter advising that failure to pay the fees in full by 30 July 2018 would result in escalated enforcement action.
73. On 24 July 2018, Mr Dunning responded in writing, stating,

"Received a letter today demanding money on the old defunct mine site which has not earned a cent in its life. We were not allowed to dig it deeper years ago, there is a depth clause inserted by Frank Carters conditions, so we wasted out time and money on this tiny lease. I'm owed \$300,000 which I'll never recover. I'm 83 now and the only thing I've got now is my old age pension. My doctor wonders why I'm still here. John Thomson our mine manager died on 30th August 2011.

...

We haven't got a environment that a business can survive in. The last words of John Thompson at the mine site were look at all the work I did for nothing. Could make one cry.

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I got a phone call this morning from Russell Branks of Orange. He says the bloody rents are paid so it seems its just another Goon Show. You will be hearing from Russell."

74. The outstanding authorisation fees were paid on 6 September 2018.
75. On 15 March 2019, the Regulator issued Mr Dunning an Official Caution and on 8 April 2019 the Regulator issued Mr Furney an Official Caution; both for breaches of section 292C(3) of the Act. No formal action was recorded against Mr Thompson.

Fail to use the land the subject of the authority in good faith

78. The objects of the Act set out in section 3A outlines the NSW Government's mandate regarding mining of mineral resources. Of particular note, sub-sections (b) and (d) proclaims the Government's commitment to fostering the social and economic benefits to the state of the NSW from the efficient development of mineral resources and ensuring an appropriate return to the state from these mineral resources.
79. The Regulator has reviewed the operations of the Authorities and has identified the following key points:
 - d. the Authorities were first granted on 2 February 2006 and were due to expire on 2 February 2011.
 - e. The development consent for the mine lapsed on 23 November 2010 and no further application has been sought by the lease holders.
 - f. On 10 January 2011, an application was lodged with the Department to renew the Authorities. Attached to the application was a renewal justification statement which stated,
 - g. "During the last 5 years Joalbar Mining has carried out a considerable amount of construction and further exploration for ore containing sufficient viable quantities of gold".
 - h. In a letter dated 15 April 2011, Mr Thompson responded to correspondence sent by the Department which noted that royalty records showed there had been no significant mineral production for the past five years. In this response Mr Thompson advised that a considerable cost had been spent on attempts to remove groundwater from the J/2 shaft in order to recover ore and proposed to drain the shaft from the south-eastern water collective point so as to expose the ore.
 - i. In a letter dated 17 May 2011, Mr Bob Harrison, an agent for the lease holders also responded to the Department's letter concerning mineral production.

- j. This letter stated, “While there has been no active mining as such to date substantial expenditure has been incurred in setting up the operations to a high standard”. This letter notes that Mr Russell Branks has acquired Mr Furney’s share and that a formal transfer will be registered.
- k. In a letter dated 27 July 2011, Mr Thompson wrote to the Department to declare an inability to recover ore material at this time due to ongoing difficulties in removing under surface water from the work-site.
- l. In a letter dated 1 August 2011, Mr Thompson again wrote to the Department to declare an inability to recover ore material due to ongoing under surface water difficulties.
- m. On 23 December 2011, Mr Branks wrote to the Department to advise that Mr Thompson had died and that his letter of 27 July 2011 was a forgery. Further, there are plans to keep the water level down to workable levels and there is a desire to renew the mining leases.
- n. In subsequent correspondence with the Department, Mr Branks advised that he had purchased Mr Furney’s share of the mine and was seeking to have his name added to the Authorities.
- o. The AEMR, dated 27 May 2016 noted that there had been no mining activity or rehabilitation conducted during the reporting period.
- p. The last approved MOP for the authorisations expired on 1 February 2018.
- q. On 5 September 2018, Mr Branks replied to an email from the Regulator in August 2018 seeking information, which included amongst other things, whether the authorisations are being operated, and whether there were any thoughts about relinquishing the authorisations. In his response, Mr Branks stated, “They have been in operations during the last year” and “we have no intention of relinquishing the leases”.
- r. The last AEMR submitted by Mr Dunning was for the period 1 February 2018 to 31 January 2019. This report noted that there no mining operations including rehabilitation during the period other than weed control and there had been no cumulative production.
- s. On 22 February 2019, the Department provided Mr Branks with information on the removal of a deceased lease holder. To date no formal application has been lodged with the Department to vary or otherwise transfer the Authorities.
- t. On 19 August 2020, Mr Dunning provided a written submission in response to a Notice issued under section 248B(1) of the Act, reference number NTCE0006026, requiring information and records.

- u. In this response Mr Dunning confirmed there was no mining activity and stated that, “John Thompson told me the mine was hopeless days before he died. The mine fills up with water every night”.
 - v. Departmental records confirm that no royalty payments have ever been received in relation to the Authorities.
80. I acknowledge that the authorisations have been pending renewal since 2011, and that the renewal process and any potential transfer has been complicated by the death of Mr Thompson.
81. Despite this, I am satisfied that the remaining lease holders have failed to use the land the subject of the authority in good faith for the purposes in which the Authorities were granted and that this constitutes a ground for cancellation of the Authorities.

Representations

88. On 18 May 2022, I wrote to the lease holders in accordance with section 126 of the Act, inviting submissions in response to my proposed decision to cancel the authorities. Any submissions were due by no later than **5.00pm on 17 June 2022**.
89. On 23 May 2022, the Regulator received an email submission from Mr Furney (lease holder) confirming he sold his share of the business operations to Mr Branks and a formal transfer was to be registered with the Department. Mr Furney also confirmed he has no interest in the mine and wants no further involvement in this matter.
90. No submissions were received from the remaining lease holders, Mr Dunning or the estate of Mr Thompson, by the due date.
91. On 3 June 2022, the Regulator received an email from Mr Branks requesting a meeting to discuss the proposed cancellation of the authorisations.
92. On 9 June 2022, the Regulator contacted Mr Branks who confirmed he received a copy of the proposed cancellation notification letter from Mr Dunning (lease holder). Mr Branks advised (amongst other things) that he acquired Mr Furney’s share of the mining operations.
93. Having regard to Mr Brank’s association with the lease holders and interest in the mine, and upon request, an extension until to no later than **5.00 pm on Friday 24 June 2022** was granted to make submissions.
94. No formal response or submissions were received from Mr Branks.

Considerations and findings

95. I am satisfied that the requirements of section 126(1) and (2) of the Act to notify the lease holders in writing of the proposed cancellation of notice have been adhered to.

Reasons for decision

96. The lease holders were afforded a reasonable opportunity to make representations for consideration in making my decision. The representations made by Mr Furney along with the comments made by Mr Branks have been considered in making my decision.
97. After having carefully considered the information before me, I am satisfied that the following grounds for cancellation exist:
- a. The lease holders have contravened provisions of the Act being:
 - i. Failure to pay the security as required by condition 22, an offence under section 378D(1) of the Act for each authority.
 - ii. Failure to lodge a MOP as required by condition 4, an offence under section 378D(1) of the Act for each authority.
 - iii. Failure to lodge AEMRs for the 2016/17, 2019/20 and 2020/21 periods as required by condition 5, offences under section 378D(1) of the Act for each period and for each authority.
 - iv. Failure to pay the 2016, 2017 and 2018 Authorisation fees for both Authorities by the due date, offences under section 292C of the Act for each period and for each authority.
 - b. The lease holders have contravened conditions of authority, being conditions 4, 5 and 22 for each authority.
 - c. The lease holders have failed to use the land subject of the Authorisations in good faith.
98. Of particular concern is the failure by the lease holders to pay the required security set at the time of grant. This demonstrates to me a clear disregard for the fundamental obligations imposed on lease holders in being granted an authorisation in accordance with the objects of the Act [section 3A(e)].
99. Furthermore, I also note that no action has been initiated by the lease holders to bring the mine back into compliance. Furthermore, despite the comments by Mr Branks, no action has been taken to recommence operations.
100. I do however acknowledge that the authorisations have been pending renewal since 2011, and that the renewal process and any potential transfer has been complicated by the death of Mr Thompson.
101. I am satisfied that there is sufficient evidence to cancel the Authorities, in that there are multiple grounds under section 125 of the Act that have been made out to a very high level of satisfactions.
102. I consider that these matters warrant the immediate cancellation of the Authorities.

Reasons for decision

103. Accordingly, I have decided to cancel the Authorities [M(C)L 309 and M(C)L 310] under section 125 of the Act based on the grounds detailed above.
104. This direction takes effect from **5 August 2022**.
105. I also note that the cancellation of the Authorities in no way precludes the Resources Regulator from taking any other action against the lease holders in respect of the authorisations, including the commencement of legal proceedings in relation to any of the identified breaches that form the basis of this decision.

Date of decision: 04 August **2022**



Peter Day

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.

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