

IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 19TH JULY, 1985
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

PEARSE v. BARTRAM

This has been the hearing of a matter which has arisen under Regulation 22 to the Mining Act. That Regulation empowers a Warden to permit the use in a claim area power operated equipment or machinery for a prospecting or mining purpose and the Regulation further sets out without limiting the generality of the expression "power operated equipment or machinery" certain mechanical items which come within the definition of power operated equipment or machinery. These are:-

- (a) bulldozer;
- (b) ripper, whether self-powered or towed;
- (c) backhoe;
- (d) dragline;
- (e) cable scraper;
- (f) face shovel;
- (g) front end or overhead loader;
- (h) skimmer;
- (i) grab;
- (j) bucketwheel excavator;
- (k) trench cutter;
- (kl) grader; or
- (l) suction pump;

It is added to the Regulation that the following items are not included in the definition:-

- (m) hand held pneumatic or electric pick, hammer or road breaker;
- (n) shaft sinking equipment or machinery or drilling or boring equipment or machinery when used to sink a vertical or near-vertical shaft or exploration shaft, drill hole or borehole;
- (o) windless, winch or elevator for transporting mined or excavated material to the surface; or
- (p) equipment or machinery used to -
 - (i) load previously mined or excavated material for transport to a treatment plant;
 - (ii) transport such material to a treatment plant;
 - (iii) fill in or securely protect any shaft or excavation;
 - (iv) make safe the collar area of any shaft; or
 - (v) carry out any works directed to be done by an inspector of mines or a mining occupations officer.

Certain lands at White Cliffs in the Broken Hill Division have attracted opal miners and prospectors over many years. Early in 1980, Mr. Gary Clune Grimes was granted permission to use power operated equipment and machinery on claims at White Cliffs and subsequently certain other persons made similar successful applications. A map was produced setting out what would be an historical area and what would be areas where there was little or no public objection to such machinery use and subsequently that map was further amended to reduce that area somewhat where machinery could not be used. There was later the drawing up of an additional map which has been referred to in proceedings before me at Broken Hill on 9th July, 1985 which contained areas which were referred to as "A", "B" and "C" and which is annexed to this judgment. These areas had during 1984 the general public approval of the local population at White Cliffs although there were some objections, area "A" being one restricted entirely to the use of hand mining methods, area "B" having a similar restriction but there being added to it a right to use a drill and blower, while area "C" being one where an application could be made under Regulation 22 for a permit.

In 1983 an application had been received from one D.K. Bartram to use a machine within what turned out to be area "B" which machine was commonly called a noodling machine or noodler. The intention was that this machine would be used to process old dumps and that a Michigan front end loader would be used in conjunction with it for transporting the old dumps to the machine for processing the material.

In granting Mr. Grimes' application in 1980, I had made certain observations one of which was that there would be no use of power operated equipment or machinery in the historic area. Area "B" was understood to include part of the historic area. In the light of that observation and because of objections which were known to exist to Mr. Bartram's application, it was refused. The matter was relisted at Mr. Bartram's request and at the Warden's Court, Broken Hill on 16th April, 1984 it was indicated to me that several persons who had signed as objectors were now withdrawing their objections. I did not accept this and required of Mr. Bartram that those objections be withdrawn in writing and that consents in writing be given to his application by all adjoining claim

holders. Furthermore, he was required to display public notice of his intention to apply for the permit at White Cliffs. Subsequently certain documents were forthcoming from Mr. Bartram, it being apparent that those who had originally objected had withdrawn their objections and because of the publication by Mr. Bartram of the application, it was granted. A permit dated 1st June, 1984 was issued for a period until the claims which were Nos. 979 to 985, remained currently registered or their registration was renewed.

On 5th November, 1984 a further complication arose for Mr. Bartram made a request to use a Kamatsu excavator in lieu of the Michigan loader because the loader, it was said, was breaking down. On technical advice, an alteration was made to the permit incorporated in an amendment of 10th December, 1974 to allow the use of the excavator but only for the purposes of extraction of the old dumps in order to feed the noodling machine and then for the rehabilitation of the area. A bulldozer was prohibited. That was where the matter then rested.

On 11th June, 1985 I received from Mr. John Pearse a lengthy handwritten letter in which he made comments, among other things, about the use to which the Kamatsu excavator was intended to be used, one of which was the breaking of solid ground, i.e. not the old dumps, and that there had been expressed no intention of backfilling open cuts. Mr. Pearse stated, among other things, that an Inspector of Mines, one Mr. K. Chilman, had stated to him that Mr. Chilman had given permission to the Bartrams to use the Kamatsu excavator to open cut the subject claims.

The permit as granted by me dated 1st June, 1984, together with its letter of amendment dated 10th December, 1984, provides by Clause 8:-

"8. A Warden may by notice in writing served on the holder of the claim revoke this permit or may in like manner vary from time to time the conditions of it, including the amount of the security to be lodged."

In the light of Mr. Pearse's letter and correspondence which I also received from Miss Gwenda Rowe, I despatched to Mr. Bartram, as the permit holder, a Notice to Show Cause why the permit should not be revoked or varied. I invited the permit holder and the complainant and all other interested parties to a sittings of the Warden's Court, Broken Hill on 9th July, 1985. That notice was sent to a large number of people and as a result many of them attended, together with others who had not received the notice but who had obviously heard about the hearing by word of mouth.

The purpose in the proceedings was to determine the proposed use of the noodling machine and its ancillary machines, to investigate the allegation that Mr. Chilman had given permission as alleged by Mr. Pearse, and lastly to attempt to clear the air as to the use of heavy machinery at White Cliffs, bearing in mind that as a Warden I have a duty to consider applications under Regulation 22.

The sittings occupied from 10.00 a.m. to 6.15 p.m. with breaks for lunch and at 11.00 a.m. and 4.00 p.m. All persons who were present who signified a desire to give evidence were permitted to do so and were cross examined by others.

On the first question of the intended use of the noodler and its ancillary machines, evidence was given by Mr. Bartram that the subject claims had not been renewed after 30th June, 1985 and in the light of that it is obvious that on and from 30th June, 1985 the permit had lapsed. I might say further that a witness, Mr. Tetheradge, indicated an intention of making an application to continue to use the noodling machine but none has yet been received.

As to the second question, Mr. Pearse said in evidence initially that he was satisfied that the comment was made to him by Mr. Chilman that he, Mr. Chilman, had given permission to use the noodling machine and the excavator to break solid ground. However, after the 11.00 a.m. break, when questioned by the Registrar, Mr. Laurie, he conceded that he may have misunderstood what Mr. Chilman had said. Furthermore, when Mr. Chilman in his own evidence

categorically denied making such a statement to Mr. Pearse, saying in effect that Mr. Pearse had been told by him that it was technically feasible to use the machines to break the solid ground, and certainly not that permission had been given by him to do that, Mr. Pearse did not afford himself of the opportunity which was offered to him of asking Mr. Chilman any questions. Therefore, in my opinion, the allegations against Mr. Chilman could not be supported on the evidence.

I turn then to the vexed question of the use of machinery in the various areas at White Cliffs. As will be appreciated, under Regulation 22 machines used for drilling or shaft sinking are not included nor indeed are machines used to elevate material to the surface. Some doubt exists whether a blower, legally, would come under the exclusion clause to Regulation 22(2) for although it is equipment for elevating material to the surface, it is of a different character to a windless, winch or elevator.

Looking at the matter generally there is, in my opinion, a need to draw more lines on the map to complete an outline of area "B" and I would consider that it be appropriate to do that at the earliest possible date, in accordance with the plan attached. Perhaps the main eastern boundary could be the "O" line which runs roughly along the road on the eastern side and the southern boundary could encompass much of the Golden Gully area to say, the F2250 line. Having done that, the question then would be as to whether the restrictions on areas "A" and "B" are still appropriate.

At the hearing the personal opinions of a number of White Cliffs people were heard and looking at it objectively, one can see that opinions differed, with one or two exceptions, in accordance with the financial interests which the opinion expresser has in the area. This is understandable. I believe that among the exceptions Miss Gwenda Rowe expressed in the court a genuine desire to preserve the historic area and the character of White Cliffs and was motivated only by the general public welfare. Most parties were not in favour of a referendum, the like of which was conducted at Lightning Ridge some eight years

ago, on the machinery question, and it was obvious to me that unfortunately there were some conflicts and jealousies among the residents and those who were or would be miners. There was a conflict of views deposed to by various witnesses as to the use of Caldwell and small auger drills in area "B". Some spoke in favour of both, some wanted only Caldwell drills allowed and others only supported the use of small auger drills. There were even differing views expressed about the dangers and level of damage caused by these machines. Mr. Pearse contended that unless heavy machinery was banned within the sensitive areas that the field would be worked out in two years, but others did not reflect this sentiment.

So it seems to me that on the views that I heard expressed there was no real consensus. In the circumstances, in view of the fact that a Warden has to consider the question of the grant or renewal of a machinery permit, and people are entitled to know where they stand, I consider it appropriate to lay down what in my opinion should be the policy.

For the benefit of not only those persons who are considering seeking permission under Regulation 22, but also the public generally, Associations and the administration, I would indicate that in regard to area "A" on the annexed map, there shall be no use of power operated equipment or machinery as defined in Regulation 22. As to area "B", I would make the same determination with the proviso that if there are exceptional circumstances, and those circumstances would have to be very exceptional indeed, a permit would be granted, but generally in area "B" there shall be no Regulation 22 approval. As to area "C", it is clear that a permit could be granted in respect of this area but it would have to be the subject of a report from field officers and the imposition of conditions.

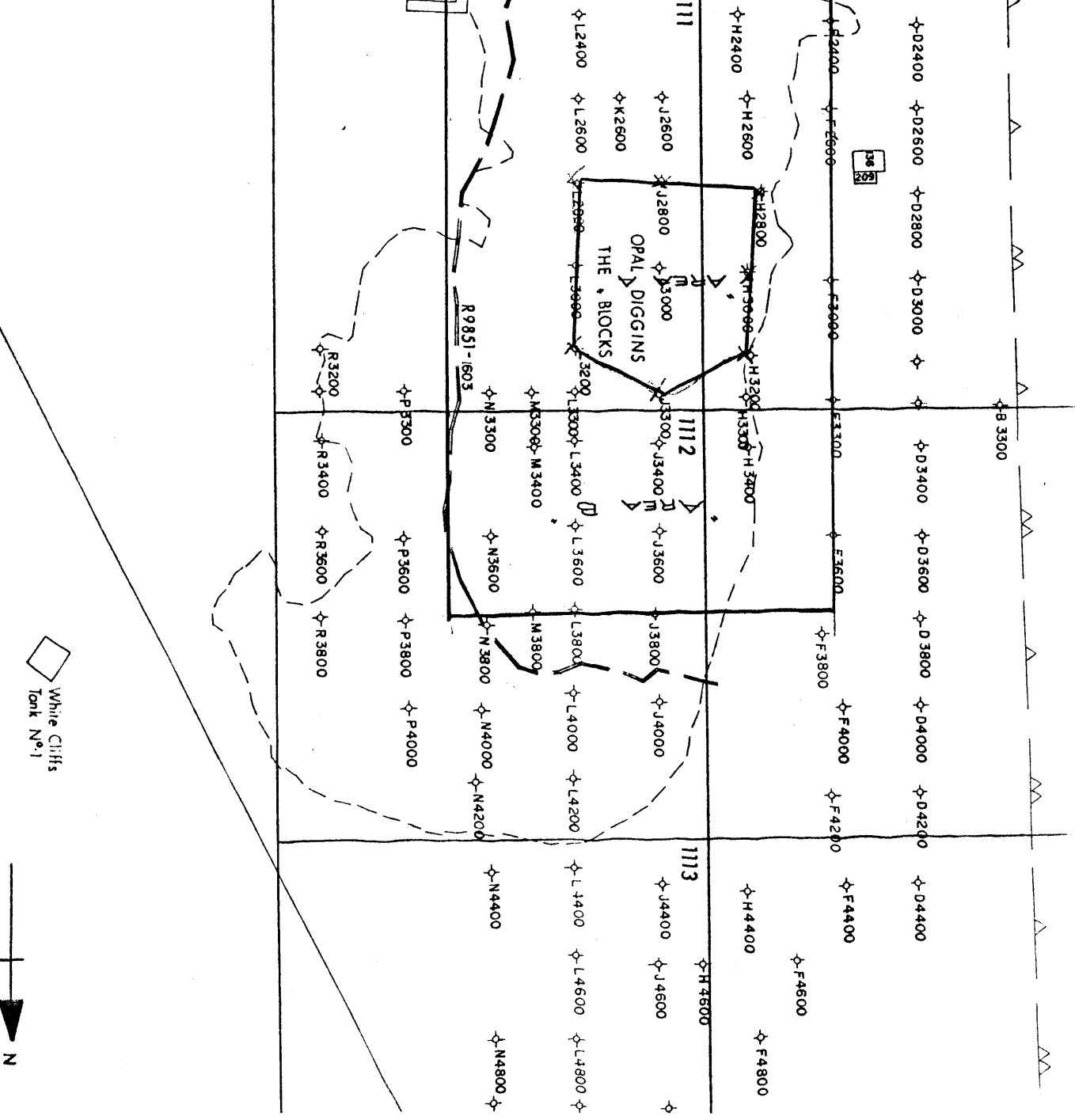
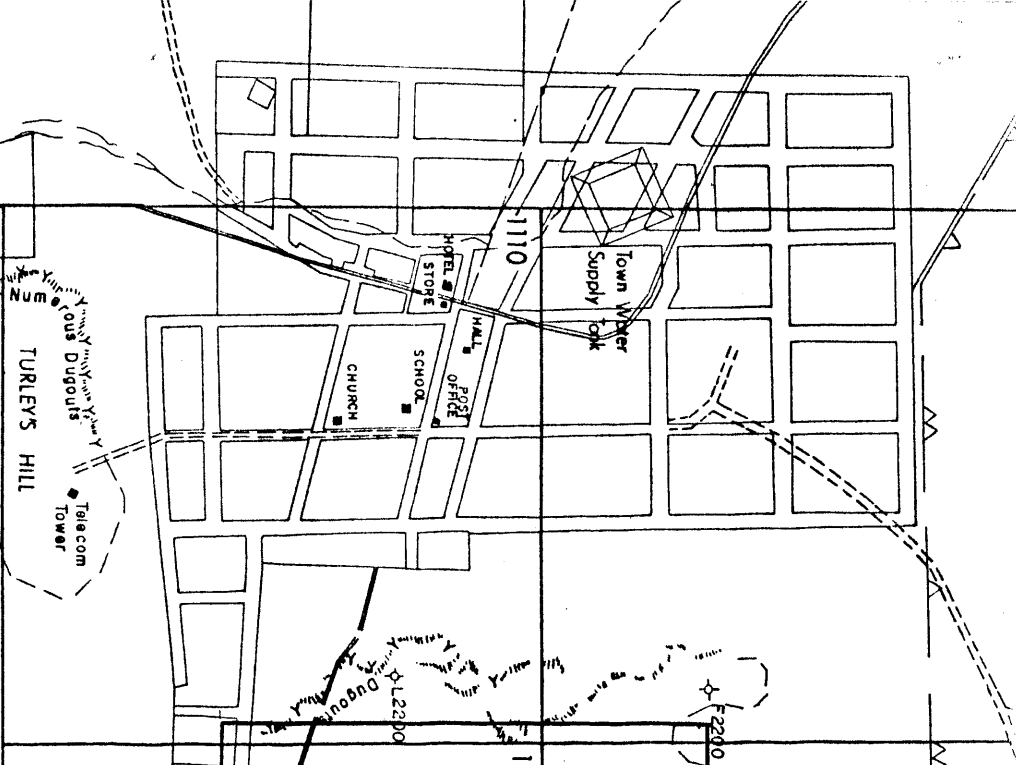
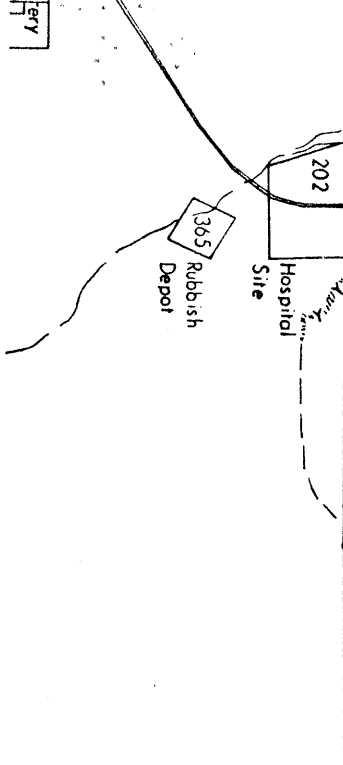
I am aware that claims that have been granted in respect of the area "A" have had specified limitations put on them by the Registrar. It is obvious from the evidence and from what I saw in the field that the area of Golden Gully although it is historically important is not within area "A" and it seems to

me that it should be. Up to the renewal time next year, that is 30th June, 1986, consideration should be given to having area "A" extended to take in parts of Golden Gully which are considered to be historically significant. Certainly, it being now only July, 1985 the administration, Associations and individual miners and citizens themselves will have sufficient time to consider the proposition.

Publication of the currently approved map and any variation which might occur should be displayed at a prominent place at White Cliffs with a clear reference to show the availability of the areas and the limitations placed upon them.

Field officers cannot be at White Cliffs all the time and it is of importance that activities which are illegal or improper should be brought to the attention of the officers at Broken Hill at the earliest possible time. In this regard much depends on local vigilance to bring breaches to attention, especially when historical areas are being jeopardised, and the co-operation of responsible citizens and organisations at White Cliffs would be appreciated.

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White Cliffs
Tonk N° 1

