
JURISDICTION : MINING WARDEN

LOCATION : PERTH

CITATION : **CERVANTES GOLD PTY LTD v PAYNES FIND
MINING PTY LTD & ORS [2025] WAMW 13**

CORAM : WARDEN T MCPHEE

HEARD : 13 MARCH 2025

DELIVERED : 15 MAY 2025

FILE NO/S : Objection 699914, 699915 & 699916

TENEMENT NO/S : Application for M59/786

BETWEEN : **CERVANTES GOLD PTY LTD**
(Applicant)

AND

**PAYNES FIND MINING PTY LTD & JO-ANN
WHALLEY & DARREL JAMES DUKE**
(Objector)

Catchwords: Application for a Mining Lease, jurisdictional issues, marking out, surveyed land, 'land open for mining'

Legislation:

Mining Act 1978 (WA): Section 18 section 85

Mining Regulations 1981 (WA): Regulation 59 Regulation 61

Result:

- 1) Application to be recommended for grant,***
- 2) Objections to be dismissed,***
- 3) Subsequent programming orders made.***

Representation:

Counsel:

Applicant	:	Mr Masson with Mr Holler
Objector	:	Mr Lawton

Solicitors:

Applicant	:	Ensign Legal
Objector	:	Lawton MacMaster

Cases referred to:

- ***Forrest & Forrest Pty Ltd v Wilson*** [2017] (2017) 262 CLR 510
- ***Azure Minerals Ltd v D & G Geraghty Pty Ltd*** [2022] WAMW 27
- ***Victorian Chamber of Manufacturers v Commonwealth*** (1943) 67 CLR 335
- ***Forrest & Forrest Pty Ltd v O'Sullivan*** [2020] WASC 468
- ***Egypt Holdings Pty Ltd; Ex parte Esso Exploration and Production Australia Inc*** [1988] WAR 122 at 129
- ***Atkins v. Egypt Holdings Pty Ltd*** 1781 of 1987 delivered 10 July 1987 Library No. 6763

Introduction

- 1 I have before me a conversion application pursuant to section 49 of the Act to convert a prospecting licence into a Mining Lease, by the Applicant dated 19 March 2024 (the Application).
- 2 There is a twist in the matter, in that the Application concerns land covered by a Prospecting Licence held by the Applicant, as well as effectively contiguous ground covered by an existing Mining Lease, also held by the Applicant.
- 3 The Objectors filed a commonly framed objection. After some discussion at trial, the Objection narrowed to the consideration of two issues, being:
 - a. Issue 1: Whether the Application had been marked out in a manner consistent with Regulation 61(b) of the Act.
 - b. Issue 2: Whether the marking out of the Application over land the subject of an existing mining lease, rendered the marking out invalid on a jurisdictional basis as a result of it being contrary to Section 18 of the Act.
- 4 The matter was heard on 13 March 2025. At the completion of the hearing, I granted leave for the filing of additional written submissions on Issue 2, given the apparent dearth of authority on the question. That was then done, and the matter reserved for the provision of reasons.
- 5 In summary, I have formed the view that the two issues can be addressed as follows:
 - a. Issue 1: The marking out pursuant to Regulation 61(b) of the Regulations is compliant and valid in the circumstances;
 - b. Issue 2: It is permissible for the holder of a mining lease to mark out ground or a portion thereof on it, for the purposes of an application for conversion of a prospecting licence also held by the same party which is

contiguous to the mining lease. As a result of that view, in this matter, no jurisdictional point arises.

- 6 As a result of my views above and noting the abandonment by the Objector of the balance of the Objections, I propose, subject only to hearing from the parties as to the form of final orders, to recommend the grant of the Application.
- 7 To that end, I note and maintain the listing for 16 May 2025 for that purpose.

Context of the Dispute

- 8 The factual context of the dispute is adequately captured in the parties Agreed Statement of Facts, which was tendered in evidence. I attach a copy of that document to these reasons as Schedule 1.
- 9 There is no factual dispute between the parties of any note. The Objector accepts the location of the relevant survey peg, and datum peg relied upon. For its part, there is no dispute by the Applicant that the ground marked out, in effect, includes all the ground the subject of the Prospecting Licence, as well as the Mining Lease also held by it.
- 10 The dispute is in the legal issues I have identified.

Evidence

- 11 Noting my comments above, I consider I do not need to address the evidence in detail, save to note the following documentation was relied upon by the parties.
- a. EXHIBIT 1: Applicants; Affidavit of Jeremy Kristian Bower, dated 26/06/2024.
 - b. EXHIBIT 2: Applicants; Affidavit of Philip Douglas Heyhoe, dated 27/06/2024.
 - c. EXHIBIT 3: Defendants; Affidavit of Darrel James Duke, dated 14/08/2024.

- d. EXHIBIT 4: Applicants; Affidavit of Philip Douglas Heyhoe, dated 11/11/2024.
 - e. EXHIBIT 5 Applicants; Affidavit of Robert Hartley Downey, dated 27/11/2024.
 - f. EXHIBIT 6 Applicants; Affidavit of Jeremy Kristian Bower, dated 18/12/2024.
 - g. EXHIBIT 7 Applicants; Statement of agreed Facts, dated 10/02/2025.
 - h. EXHIBIT 8 Applicants; Bundle of documents being conditional surrender document form 12 in respect of mining lease 59/662, dated 07/03/2025.
- 12 I will make some additional comments in respect of the bundle of material filed as Exhibit 8.
- 13 That evidence was directed to what was initially understood to be the concerns held by the Objectors as to Issue 2.
- 14 The effort was made by the Applicant to conditionally surrender the Mining Lease in question, upon the grant of the larger tenement comprising the conversion application from the prospecting licence and the mining lease.
- 15 As noted above, the attack on the Application by way of Issue 2 crystalized into a jurisdictional argument on *Forrest & Forrest Pty Ltd v Wilson* [2017] (2017) 262 CLR 510 grounds, meaning that if I accepted it, there would be no Application moving forward, and the conditional surrender would never occur.
- 16 Another way of looking at it is to state that the conditional surrender of the Mining Lease, could not (on the Objectors case) cure the jurisdictional defect in the Application.
- 17 Exhibit 8 is however relevant in circumstances where I have dismissed the jurisdictional argument arising pursuant to section 18 of the Act. It was necessary for the Applicant to address the possible issue of a circumstance arising where I

was being asked to recommend the grant of a mining lease, over ground the subject of an existing mining lease.

- 18 In my view, the conditional surrender proposed, deals with that issue in a permissible, and adequate manner.

On Compliance

- 19 Subject to the legal issues which have been identified, there was no other question of compliance.
- 20 I am satisfied that the Application otherwise complies with the jurisdictional requirements of the Act.

Issue 1 - Marking Out

- 21 It is convenient to detail at this point the terms of Regulation 61 of the Regulations.
- 22 Regulation 61 says as follows:

a. 61. Marking out surveyed land

It shall not be necessary to mark out land in respect of which a mining tenement is sought, the boundaries of which are identical with any surveyed land, other than by fixing —

- (a) at a corner of the boundaries; or*
(b) if there is an existing survey mark at a corner of the boundaries, as close as practicable to the survey mark without moving, changing or otherwise interfering with the survey mark,

a datum post to which the notice of marking out in the form of Form 20 is affixed.

- 23 It is not in dispute that in this matter, the ground sought to be marked out related to two separate tenements. The Form 21 filed by the Applicant is attached to these reasons as Schedule 2.

- 24 The intent of the Form 21 is plain and in my view crystallizes the dispute, plainly articulating that the Application related to (and sought) the ground the subject of the two identified surveys.

The Applicant's Position

- 25 The Applicants position was that for compliant marking out to be made in accordance with Regulation 61(b), regard may be had to the words of the Act, and the act of placing a single datum post (with Form 20 attached) at a corner where there was an existing survey mark being relied upon, as close as possible to that mark.
- 26 The Applicant says that the Application seeks a tenement, the boundaries of which are identical to the ground of two existing pieces of surveyed ground (held by the Applicant), with the intent of the Application being to create a single tenement.

The Objectors Position

- 27 The Objectors position is that Regulation 61(b) of the Regulations may only be relied upon to reference to a single tenement.
- 28 The Objector says that there is no capacity to mark out by way of Regulation 61(b) of the Regulations, by adopting the survey marks relating to two existing pieces of surveyed ground.

Analysis

- 29 The necessary approach to statutory construction is not in dispute.
- 30 In *Azure Minerals Ltd v D & G Geraghty Pty Ltd* [2022] WAMW 27 at [134 – 141] I set out my understanding of the required approach to a question of statutory construction in this jurisdiction.
- 31 I did not understand those principles to be in dispute between the parties.

32 I consider that same approach is required here, and adopt the approach referred to.

33 In this case, what fails to be considered is the meaning of the words in Regulation 61, being, in my view, most relevantly, the words:

- a. *“the boundaries of which are identical with any surveyed land”*; and,
- b. *“if there is an existing survey mark at a corner of the boundaries, as close as practicable to the survey mark”*; and,
- c. *“a datum post to which the notice of marking out in the form of Form 20 is affixed.”*

34 There is no dispute in this case that the Application, concerns the boundaries of two previously surveyed tenements, as set out in the Form 21.

35 The words *“the boundaries of which”* must relate to the boundaries of the land sought in the Application.

36 Those words are then followed by *“are identical with any surveyed land”*. In my view those words hold the gravamen of the dispute.

37 Giving the words their plain and ordinary meaning in the context of the objects and purposes of the Act, compels a view that the use of *“any surveyed land”* contemplates the plural, in that it must refer to the possibility of more than one piece of land being sought.

38 It does not state *‘a piece of surveyed land’*, rather the most relevant word is *“any”*.

39 In *Victorian Chamber of Manufacturers v Commonwealth* (1943) 67 CLR 335, Williams J said at 346:

- a. *“‘Any’ is a word which ordinarily excludes limitation or qualification and which should be given as wide a construction as possible. ‘Any goods’*

therefore includes all goods except where this wide construction is limited by the subject matter and context of a particular statute.”

- 40 In my view the same position is correct here. The relevant restriction to be read in the provision is in the earlier part of the provision, where the Application boundaries, i.e., the land sought, are expressly required to be identical to that land comprising the “*any surveyed land*” sought to be identified.
- 41 I see no reason to read a restriction into the latter words, restricting it to a single piece of surveyed land.
- 42 If that view is correct, and a single Application which seeks to in effect, to amalgamate two pieces of land which are the subject of two registered surveys, it seems to me that the exception to the marking out requirements of Regulation 59, may be enlivened.
- 43 That leaves for possible consideration a query as to whether in such a circumstance there is a need to use two datum posts, with one at each survey mark sought to be relied upon.
- 44 In my view, the answer is no, for the reason that the words of the Regulation, which I consider contemplate the inclusion of a number of pieces of surveyed land, and then unambiguously state that “*a datum post*” be fixed as close as possible to the mark, with the Form 20 attached.
- 45 In this respect, the Objector sought to submit that a survey peg, in general terms, included on the top of it, details of the land captured by that survey. That may or may not be so – there was no evidence to support such a submission, however I do not consider it relevant. Pursuant to the express words of the Regulation, a single post is sufficient, attaching the Form 20.
- 46 In my view the last part of the requirement addresses the concerns expressed by the Objector. The detail of the Form 20 will (as in this case), provide the detail

of the land sought to be captured by the marking out by reference to the additional surveyed land to be included in the Application.

47 In my view that is sufficient to meet the requirements of the Regulation and is what has occurred in this case.

48 There is no difficulty with the marking out of the Application, and the Objection on that basis should be dismissed.

Issue 2 – Section 18 of the Act

49 Issue 2 raised a quite interesting issue, concerning in broad terms, the capacity to mark out on ground the subject of an existing tenement.

50 The Issue to be determined in this case is not that broad though, but rather whether on the case presenting, it is possible for a tenement holder to mark out ground it holds, as part of a further Application.

51 This Issue was the subject of further written submissions at my request.

52 Section 18(c) of the Act says:

a. *“All Crown land, not being Crown land that is the subject of a mining tenement, is open for mining and as such is land... which may be made the subject of an application for a mining tenement subject to an in accordance with this Act.”*

The Applicant’s Position

53 At the hearing, the Applicant’s position was that it was possible to mark out ground the subject of an existing tenement, in the circumstances presenting.

54 It was also suggested, broadly, that marking out on ground the subject of an existing tenement, was a matter which did not give rise to a jurisdictional concern, as that phrase is understood following *Forrest & Forrest Pty Ltd v*

Wilson [2017] (2017) 262 CLR 510 and *Forrest & Forrest Pty Ltd v O'Sullivan* [2020] WASC 468.

55 The Applicant relied upon *Egypt Holdings Pty Ltd; Ex parte Esso Exploration and Production Australia Inc* [1988] WAR 122 at 129 (*Esso*).

56 In *Esso* per Brinsden J (with whom Burt CJ agreed):

- a. “Section 18 states that all Crown Land, not being Crown land that is the subject of a mining tenement, is open for mining by any person who may do the things or any one of them that is set out in paras. (a) to (c) inclusive. It does not in its terms purport to deal with Crown land which is the subject of a mining tenement. As to such land one must look at other sections of the Act. Counsel for Egypt made reference to an earlier decision of this Court *Atkins v. Egypt Holdings Pty Ltd* 1781 of 1987 delivered 10 July 1987 Library No. 6763 unreported by asserting that it was authority for the proposition that if Crown land is subject to a mining tenement it is not open for mining and hence not open for marking out except to the limited extent provided by s.49. And then only if the application is made for the mining tenement marked out pursuant to that section while the P/L remains in force. In my view that case must be looked at in the circumstances in which it arose. It concerned marking out on land the subject of a P/L by a person other than the holder of the tenement and the judgments of the court must be regarded in the light of those circumstances. If a person other than the holder of a mining tenement wishes to mark out Crown land then he must bring himself within s.18 unless he can point to some other section of the Act which permits him to mark out Crown land which is a mining tenement. But a person the holder of a mining tenement in accordance with certain sections of the Act, may mark out as a mining tenement the land the subject of the mining tenement. It is conceded by counsel for the applicant that s.49 by implication is one such exception at least to the extent that

the application is made while the prospecting license is still in force. Section 67 is another such example and so is s.91(1) and possibly s.76. I do not suggest those are the only relevant sections but they suffice to show that in certain circumstances the mining tenement holder may, if he wishes, mark out land the subject of the mining tenement.”

57 And later:

- a. *“No statutory provision was referred to which expressly made unlawful that was previously lawful. Section 18 seems to be relied upon by implication to have that effect, it being submitted that it provides no basis for an implication that a person who holds a mining tenement over Crown land may mark out and apply for other tenement over that land. I would agree that s.18 does not have such an implication but that is because s.18 does not address itself to what may be done on Crown land the subject of a mining tenement. At the risk of being repetitive I again say that what may be done by a mining tenement holder on Crown Land the subject of the tenement is to be found in other sections of the Act.”*

58 Relying on the above, the Applicants position is summarised from the written submission in these terms:

- a. *Section 18 merely provides when land is open for mining or not. It states that such land ‘may be the subject of an application if the land is open.’ It contains no words that suggest it prohibits land being part of an application if it is already subject of a mining tenement.*

The Objectors Position

59 The Objector asserted that it is simply not open to any party to mark out ground already the subject of a mining tenement, save in circumstances where there was an express power to do so, such as for the purposes of a miscellaneous licence.

- 60 The Objector submitted that that requirement ought be regarded as jurisdictional, meaning that no valid application could be made.
- 61 The Objector relied upon *Atkins v. Egypt Holdings Pty Ltd* 1781 of 1987 delivered 10 July 1987 Library No. 6763 (*Atkins*), as well as *Esso*.
- 62 In *Atkins*, the following passages were relied upon:
- a. Per Brinsden J: *"it seems to me perfectly plain that a mining tenement not being crown land within the meaning of Section 18, while it remains in force, is not open to being the sub/ect of marking out of another mining tenement pursuant to section 105 and the Regulations. except to the limited extent contained in section 49. Section 49 avails only to the holder of a prospecting licence the right to apply for an have granted to him one or more mining leases or one or more general purpose leases or both in respect of any part or parts of land the subject of the prospecting licence."* (emphasis added)
 - b. Per Kennedy J: *"By Section 18, all crown land, not being crown land that is the subject of a mining tenement is open for mining and, as such is land where any person may set up pegs or otherwise mark out the land pursuant to section 104 in connection with an application for a mining tenement... Subject to and in accordance with this Act. It must follow that, for so long as crown land is the subject of a mining tenement, it is not open for any person to mark out that land... It also follows that, save and except that, immediately after the land once again became open for marking out, the applicant placed a duly completed Form 20 upon a datum post, what was claimed by the applicant to have constituted marking out was done at a time when the land was not open for marking out."* (emphasis added)
 - c. Per Olney J: *In my opinion the clear meaning of Section 18(a) is that only land which is open for mining can be marked out in connection*

with an application for a mining tenement and it must follow that land which is not open for mining may not be marked out for that purpose."
(emphasis added)

63 From *Esso*, the following passages were relied upon by the Objector:

- a. *"Per Burt CJ: "It does not advert to marking out at all. In my opinion the Wardens survey of the legislation is correct. If the applicant's arguments are to be accepted it would mean that once a mining tenement was granted, the land the subject thereof would cease to be open for mining to anyone, including the tenement holder ... All that Section 18 means is that where Crown Land is the subject of a mining tenement. no other person may set up pegs or otherwise mark out the land."*
- b. *"Per Wallace J: "If a person wishes to mark out Crown land, then they must bring themselves within the section 18 of the Mining Act, unless they can point to some other section of the Act which permits them to mark out crown land which is a mining tenement"*

64 I must add at this point, that the excerpt quoted above, at 63(a) of these reasons, was referred to in the written submissions of the Objector as falling from his Honour Chief Justice Burt. However I am not sure that they do not, they appear to fall from his brother, the learned Justice Wallace. His Honour the Chief Justice, agreed with Justice Brinsden's reasons, reserving his comment to one relating to whether it was necessary to quash the report of the Warden, or its content.

65 The Objector's position, as summarized in the written submissions, was as follows:

- a. *The datum post for a tenement application must be located on land open for mining for it to be validly marked out except for a miscellaneous*

licence application, special prospecting licence and conversion of a prospecting licence pursuant to section 49 of the Mining Act;

- b. In the case of a mining lease, you cannot mark out an application for a mining lease over an existing live mining lease;*
- c. In circumstances where the datum is not located on land open for mining and/or the application is made over an existing mining lease (and the application does not fall within one of the express exceptions), the applicant has not complied with the marking out provisions of the Mining Act and Mining Regulations 1981 (WA) (**Regulations**) with the result that the Warden has no jurisdiction to consider the application.*

Analysis

- 66 In my view, in the circumstances presenting in this case, there is no need to undertake the (quite difficult) task of formally reconcile *Atkins*, with *Esso*.
- 67 I say a difficult task, as there does appear (with very great respect) to be a degree of tension between the position of the Full Court in *Atkins*, and that taken shortly afterwards, in *Esso*, as to whether section 18 of the Act precludes absolutely the ability to mark out on an existing tenement (in general terms), or whether marking out is permissible, with the relevant application to be subject to substantive consideration pursuant to the relevant and applicable provisions of the Act, and the facts presenting.
- 68 Without determining it, I would suggest the latter view is correct relying on the later decision of *Esso* to arrive at that view, and the heavy emphasis placed upon the consideration of individual provisions of the Act in the factual context of the decision under consideration, rather than adopting a view that no marking out may ever occur on ground ‘*not open for mining*’ pursuant to section 18 of the Act as a general rule. As set out in *Esso*, and accepted by the Objector, that is plainly not so. Special Prospecting Licenses and Miscellaneous Licenses can be marked out on existing tenements.

- 69 I consider that the answer may well be as simple as stating that the holder of the Mining Lease in this case has (obviously) not objected, and therefore there is no difficulty.
- 70 Most relevantly however, I consider this matter may be resolved without the need to address that general question. That is because regard must be had to the later statement in *Esso*, which is extracted above.
- 71 In my view *Esso* distinguished *Atkins* in making the statement referred to above, in respect of the case before the Court in *Esso*.
- 72 It is also worth noting at this point that the factual position set out in *Atkins* and in *Esso*, are both far removed from that I face. In *Esso*, the holder of the relevant prospecting licence, marked out on the ground, in anticipation of an application for a mining lease. The relevant Prospecting Licence appeared to have then ceased, prior to the making of the application required.
- 73 In the intervening period, the Egypt party marked out (as then required) an exploration licence over the same ground and made an application. The Esso party then applied pursuant to their earlier marking out, which was objected to by Egypt.
- 74 That is not this case. In this case, the Applicant is the holder of the relevant prospecting licence, and the mining lease, which were sought to be in effect amalgamated.
- 75 The question then becomes whether it is lawful for the holder of a mining lease to mark out on its mining lease, for the purposes of an application for a tenement applied for by way of an application for conversion of an existing prospecting licence (held by the same party) which shares a border with the said mining lease.
- 76 I am bound by that later statement in *Esso*. The case before me partially concerns land being marked by the existing tenement holder, for the purposes of an application pursuant to section 49 of the Act.

- 77 In this case, the applicant applied for a Mining Lease, over ground held by it, in the form of a Prospecting Licence, and an additional portion being held by way of an existing Mining Lease.
- 78 In my view, on the Objectors own case, there can be no difficulty with that first aspect. Rather, it is the inclusion of the Mining Lease into the Application which is the basis of the submitted difficulty.
- 79 Applying my understanding of *Esso*, in my view the rights of Mining Lease holders pursuant to section 85 of the Act (and other provisions) are not inconsistent with the course of action taken here, and indeed, that course of action appears to be an efficient manner in which to address the sort of tenement holding seen here, and a desire to amalgamate the two tenements held by the same party into one, by the making of this single Application, and relying upon the conditional surrender.
- 80 As a result, I consider that the holder of the prospecting licence may mark out the ground for the purposes of conversion, and include land held in the form of a mining lease in that Application as well, which may be contiguous to the prospecting licence.
- 81 In this respect, I rely in particular on the statement of Brinsden J in *Esso*:
- a. *It [section 18] does not in its terms purport to deal with Crown land which is the subject of a mining tenement. As to such land one must look at other sections of the Act.*
- 82 It follows, that the appropriate course of action is to consider the nature of an application made, and the factual situation presenting when it is made, to come to a view as to the nature of the validity or otherwise of the application.
- 83 There is, for the reasons articulated in *Esso*, no difficulty with that course of action in this case, which in my view is also entirely consistent with the objects and purposes of the Act.

84 The jurisdictional challenge said to arise from section 18 of the Act fails, and the Application may be considered on its merits.

Conclusion & Orders

85 For the reasons given above, in my view the Application is compliant with the requirements of the Act as relevant, and I do not consider that there is any objection which moves me to recommend refusal.

86 Accordingly, I will recommend the Minister grant the Mining Lease in accordance with the Application, though I will hear from the parties as to the form of final Orders as might be required.

87 To that end, I note the matter is listed for mention on 16 May 2025, and will maintain that listing.



Warden T W McPhee

15 May 2025

BEFORE THE WARDEN
AT PERTH (MT MAGNET)

Application for Mining Lease 59/786
Objections No. 699914, 699915 and 699916

BETWEEN:

CERVANTES GOLD PTY LTD

Applicant

and

PAYNES FIND MINING PTY LTD

First Objector

JO-ANN GAYE WHALLEY

Second Objector

DARREL JAMES DUKE

Third Objector

AGREED FACTS

Date of Document: 10 February 2025

Filed on behalf of: The Parties

Date of Filing: February 2025

Filed by:

Ensign Legal
Level 9
200 St Georges Terrace
PERTH WA 6000

Tel: (08) 9216 7127
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Ref: 10977

For the purpose of determining the proceedings, the Applicant and Objectors agree that:

1. On 19 March 2024, Cervantes Gold Pty Ltd (**Cervantes**) lodged an application for Mining Lease 59/786 (**M59/786**) pursuant to section 74 of the *Mining Act 1978* (WA) (**Mining Act**).
2. M59/786 encroaches upon:
 - a. P59/2331 (live) held by Paynes Find Mining Pty Ltd to the extent of 0.01%
 - b. the application for P59/2405-S brought by Darrel James Duke (pending) to the extent of 11.36%;

- c. the application for P59/2407-S brought by Jo-Ann Gaye Whalley (pending) to the extent of 15.26%; and
 - d. the application for P59/2408 brought by Murchison Earthmoving & Rehabilitation Pty Ltd (pending) to the extent of 0.01%.
3. The Application was accompanied by the prescribed rent and prescribed application fee.
4. On 26 March 2024, Cervantes lodged its mining proposal in support of the Application pursuant to section 74(1AA) of the Mining Act and Regulation 25AA of the Mining Regulations.
5. On 26 March 2024, Cervantes lodged its mine closure plan in support of the Application pursuant to section 70O(1) of the Mining Act.
6. On 27 March 2024, Cervantes caused a copy of the Application to be served upon the Chief Executive Officer of the Shire of Yalgoo in accordance with regulations 64A(2) of the Mining Regulations.
7. On 15 April 2024, Cervantes lodged its Form 32 security of \$5,000.00 pursuant to sections 84A(1) and 126 of the Mining Act and regulation 112 of the Mining Regulations.

Marking Out

8. On 14 March 2024, Mr Phil Heyhoe attended the land the subject of M59/786.
9. The completed Form 20 was **attached** to the datum post at 11:50am on 14 March 2024.
10. The Form 20 provides the following Description of boundaries, being “*Ground being identical to surveyed M69/662 and late surveyed M59/504.*”
11. The Form 21 contains the same Description of boundaries, being “*Ground being identical to surveyed M69/662 and late surveyed M59/504.*”
12. Marking out occurred as set out in the Affidavit of Philip Douglas Heyhoe sworn 27 June 2024 and the Affidavit of Philip Douglas Heyhoe sworn 11 November 2024.

Ensign Legal
Ensign Legal
Solicitors for the Applicant

Lawton Macmaster Legal
Lawton Macmaster Legal
Solicitors for the Objector

Schedule 2 – Application Form 21

Online Lodgement - Submission: 19/03/2024 15:48:54; Receipt: 19/03/2024 15:48:54

Form 21

WESTERN AUSTRALIA

Mining Act 1978

(Secs. 41, 58, 70C, 74, 86, 91, Reg. 64)

APPLICATION FOR MINING TENEMENT

(a) Type of tenement	(a) Mining Lease		No. M 59/786
(b) Time & Date marked out (where applicable)	(b) 14/03/2024 11:50:00	(c) YALGOO	
(c) Mineral Field			
For each applicant:	(d) and (e) CERVANTES GOLD PTY LTD (ACN: 134 854 461) C/- AUSTRALIAN MINING & EXPLORATION TITLE SERVICES PTY LTD, PO BOX 40, DUNCRAIG, WA, 6023		(f) Shares 100
(d) Full Name and ACN/ABN			
(e) Address			
(f) No. of shares			
(g) Total No. of shares			(g) Total 100
DESCRIPTION OF GROUND APPLIED FOR: (For Exploration Licences see Note 1. For other Licences see Note 2. For all Licences see Note 3.)	(h) Paynes Find (i) Datum is located at the Southeast corner of surveyed M59/662 (being at MGA94 Zone 50 coordinates 6761485N 568037E) (j) Ground being identical to surveyed M59/662 and late surveyed M59/504. The application is a Conversion of P 59/2076 . Minerals: Gold		
(h) Locality			
(i) Datum Peg			
(j) Boundaries			
(k) Area (ha or km ²)	(k) 53.05000 HA		
(l) Signature of applicant or agent (if agent state full name and address)	(l) <i>Claire Brook</i> C/- AUSTRALIAN MINING & EXPLORATION TITLE SERVICES PTY LTD, PO BOX 40, DUNCRAIG, WA, 6023		Date: 19/03/2024

OFFICIAL USE

A NOTICE OF OBJECTION may be lodged at any mining registrar's office on or before the 23rd day of April 2024 (See Note 4).

Where an objection to this application is lodged the hearing will take place on a date to be set.

Received at	15:48:54	on	19 March	2024	with fees of
Application	\$638.00				
Rent	\$1,404.00				
TOTAL	\$2,042.00				
Receipt No:	42114798273				

Mining Registrar**NOTES****Note 1: EXPLORATION LICENCE**

- (i) Attachments 1 and 2 form part of every application for an exploration licence and must be lodged with this form in lieu of (h), (i), (j) and (k) above.
- (ii) An application for an Exploration Licence shall be accompanied by a statement specifying method of exploration, details of the proposed work programme, estimated cost of exploration and technical and financial ability of the applicant(s).

Note 2: PROSPECTING/MISCELLANEOUS LICENCE AND MINING/GENERAL PURPOSE LEASE

- (i) This application form shall be accompanied by a map on which are clearly delineated the boundaries of the area applied for.

Note 3: GROUND AVAILABILITY

- (i) The onus is on the applicant to ensure that ground is available to be marked out and/or applied for.
- (ii) The following action should be taken to ascertain ground availability:
 - (a) public plan search; (b) register search; (c) ground inspection.

Note 4: ALL APPLICATIONS OVER PRIVATE LAND

The period for lodgement of an objection is within 21 days of service of this notice, or the date noted above for lodging objections, whichever is the longer period.