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WEST BUSINESS

Mining Warden twist for Ellendale diamond tenements

■ **Nick Evans**

The fate of the collapsed Ellendale diamond mine faces a bizarre twist, with the Department of Mines and Petroleum seeking a ruling from the Mining Warden on whether its underlying tenements still exist.

Ellendale's liquidators, Jirsch Sutherland, effectively dumped the mine and its \$28 million to

\$40 million environmental liability on DMP and its Mining Rehabilitation Fund when they filed a "notice of disclaimer of onerous property" under the Corporations Act on October 19, seeking to terminate their rights, interests and property relating to Ellendale.

But two days later Phosphate Australia, which controls the neighbouring Blina diamond

project, filed a forfeiture application over Ellendale's main mining tenement for non-payment of fees and royalties.

The Phosphate Australia application fell between the liquidator's notice and expiry of a 14-day legal window for DMP to oppose it. It came just ahead of Mines Minister Bill Marmion's move to excise tenements on land available for pegging.

It leaves all parties in a tricky position. If the Mining Warden rules the tenements ceased to exist when the application was filed it would limit DMP's ability to intervene in a future company collapse.

But if Phosphate Australia's forfeiture application is held to have pre-empted the cancellation of the mining tenements, it could be able to peg new ground

free of its predecessor's environmental liabilities, which would remain in the hands of the MRF.

That would foil DMP's plan to seek a new owner that would agree to assume Ellendale's rehabilitation responsibilities.

It is understood the situation has also raised concerns in the State Government that the use of

the Federal Corporations Act to escape requirements set under local laws such as the Mining Act could become more widespread if a precedent is set by the Ellendale collapse.

Phosphate Australia executive chairman Jim Richards said he expected Ellendale's situation would eventually be resolved through discussion, although its legal position would need clarification by the Warden.

But Mr Richards said he did not believe DMP would find a new buyer that would take on Ellendale's environmental liabilities.

"The thing has already been for sale for a dollar, effectively, and nobody has gone for it. Lots of people looked over the data and no one took on the liability," he said.

"So that says loud and clear that Ellendale is no longer a mining project, it's an exploration project again. And clearly exploration companies aren't going to be able to take on \$30 million in rehabilitation liabilities."

"It's in the best interests of the Government to sit down together to try to thrash something out that would lend the project to being reinvented as an exploration project," he said.

The matter will return to the Warden's court this month.



Setback: Chevron's Wheatstone LNG project had been scheduled to start producing by the end of the year.

Chevron flags delayed start to Wheatstone