

Mount Burgess fights for Kihabe

Mount Burgess Mining NL refuses to give up the fight for the Kihabe-Nxuu zinc-lead-silver project in Botswana despite no end in sight to a drawn-out legal battle.

The ASX-listed company's wholly owned subsidiary Mount Burgess Botswana Pty Ltd was forced to surrender prospecting licence PL69/2003 in May last year when Botswana's newly promoted Minister of Minerals Energy and Water Resources, Kitso Mokaila, rejected an application for an extension of the associated tenements.

The decision left the team at Mount Burgess stunned, especially since the company had submitted an application some 14 months earlier to renew its prospecting licence for another two years.

Mount Burgess has spent up to \$14.5 million over several years exploring and developing the project tenements, including \$1.2 million since lodging the extension application.

Under the Botswana Mines and Minerals Act, companies can assume licences are automatically extended unless informed otherwise within a two-month period. This also applies to any requests to alter previous applications.

However, Mokaila claims Mount Burgess did not seek approval from his office to make changes to the original exploration programme nor did it comply with the Mines and Minerals Act.

In a letter addressed to Mount Burgess in July 2013, Mokaila wrote: "The issue of unavailability of grid power was raised as the main reason why you did not proceed with a feasibility study as it is a requirement under the Australian JORC Code for a competent person to sign off the feasibility."

"As indicated in my letter of 13 May 2013, Mount Burgess cannot unilaterally amend the approved prospecting programme without the Minister's approval."

But Mount Burgess chief executive Nigel Forrester insists his company sought the necessary approval through a presentation to then-Minister for Minerals Energy and Water Resources, Ponatshego Kedikilwe, in March 2012.

"We've always had very good dealings and good associations with the bureaucracy there, but I don't know what's gone wrong now," a frustrated and bemused Forrester told **Paydirt**.

"The fact is we should have been told if the licence was not going to be renewed by June 30, 2012. Basically the procedure is if you're not told you won't get your licence renewed then you can assume it will get renewed."

The presentation highlighted a lack of grid power in the region – something Mount Burgess had previously been assured would be made available by the relevant authorities in Botswana.

In a previous licence extension application from 2010, Mount Burgess had



Mount Burgess is locked in a tense legal battle to regain the prospecting licence for the Kihabe-Nxuu project in Botswana

stated it would proceed with a feasibility study based on the assumption grid power would be made available.

"It became apparent during the next two years that there wasn't going to be power so what we had to do was look at alternative processes for metallurgical recovery to reduce the power requirement and everything else," Forrester said.

The licence application signed in 2010 also required Mount Burgess to comply with an international code when it came to completing a feasibility study, but this was hindered by the power access issue.

"The JORC code says you cannot produce a feasibility study if you cannot upgrade your resources to reserve and we couldn't do that because there was no power," Forrester said.

"Now Minister Mokaila is saying we didn't comply with the Act, but we did because the code doesn't allow us to upgrade our resources

to reserve and as a consequence we can't produce a feasibility study."

Mount Burgess has launched a string of legal appeals since, including a direct plea to Kedikilwe – now the Vice President – without success. The High Court of Botswana ruled on April 28 the company's application for renewal of PL69/2003 to be struck out with costs.

A notice of appeal was lodged with the High Court of Botswana on May 26 to seek a reversal of that ruling, but the company's legal counsel is yet to receive a finite date for that hearing.

"We've had all the files submitted and we've actually been given a case number, but when the actual hearing is going to take place I don't know yet," Forrester said.

"The Appeal Court doesn't sit on a daily basis, it's only something like four times a year. The good thing with the Appeal Court is it's presided over by three independent Commonwealth judges so we believe we will get a reasonably equitable hearing."

Forrester said he had been presented with other project opportunities while his company sweated on the future of Kihabe-Nxuu, but none were as advanced as what the prized Botswana asset had to offer.

"It's all been a bit frustrating and we should have been at least 18 months ahead with this project than where we are now," he said. "We've got a lot of shareholders who have put a lot of money into this so we've got to fight for them and we're damn well going to do that."

– Michael Washbourne

Timeline of key events at Kihabe

March 18, 2010 – Mount Burgess applies for extension of PL69/2003, completes checklist for prospecting operations under Botswana's Mines and Minerals Act.

March 23, 2012 – Mount Burgess gives presentation to Minister Kedikilwe detailing changes to prospecting programme at Kihabe.

March 29, 2012 – Mount Burgess lodges application for two-year extension of the prospecting licence to June 30, 2014.

May 13, 2013 – Minister Mokaila rejects application for extension, claiming Mount Burgess failed to obtain approval to amend the prospecting programme.

April 28, 2014 – High Court of Botswana rules the company's application for renewal of PL69/2003 be struck out with costs.

May 26, 2014 – Mount Burgess lodges a notice of appeal in the Appeal Court of Botswana to have the High Court ruling overturned.