

RECENT DEVELOPMENTS

QUEENSLAND

INFORMED LANDHOLDER CONSENT*

Ferguson v Joachim ([2004] QLRT 26 & [2004] QLRT 30 (Kingham DP))

Application for mining claim – Objections – Consent of owners of restricted land – Unallocated State land – Whether State’s consent required – Failure to comply with requirements – Public interest grounds

Preliminary Point

As a preliminary question, the Tribunal considered whether an objection was duly lodged. On 28 December 2003, the objector posted an objection from Beenleigh to Emerald. The Mining Registrar’s office was closed until 2 January 2004, the end of the objection period, but no mail was delivered on that day due to an Australia Post holiday. The next working day was 5 January, the date which was stamped on the objection.

The envelope in which the objection was sent was not retained. There was no evidence about how the envelope was addressed and postmarked and no evidence that the objection would not have arrived in Emerald before 2 January in the normal course of post.

Kingham DP held that the objector should not be penalised for events outside his control. She did not accept that the Mining Registrar’s stamp of 5 January established that the objection was out of time, and evidence tended to show that the objection would have been received in time in the normal course of post. Therefore, the objection was duly lodged within the objection period.

The Mining Claim Application

The mining claim application covered a predominantly residential area (restricted land). The applicant misunderstood the legal requirements, believing that he would only have 30 days to gain the consent of 11 surrounding landholders after lodging his application. He therefore sought the consents prior to lodging the application, but was vague in his description to the landholders of what land he was applying for.

The Consents

One of the landholder consents contained no information about the purpose, term or area that was to be applied for. Kingham DP held that this consent was to a proposal to apply for an imprecisely defined area and did not fulfil the requirements of s 51(2) *Mineral Resources Act 1989* (MRA). This was fatal to the application because s 51 provides that no mining claim can be granted over restricted land when the claim is lodged without the consent of the owner of that land.

The application also covered unallocated State land. The Department of Natural Resources, Mines and Energy submitted that its consent was required because its plan to freehold the land was well advanced and upon the performance of some final steps the land would be converted to state freehold. The Deputy President noted that ‘owner’ in the MRA includes a person who will be entitled to a deed of grant in fee simple upon the performing of some condition. It was held that

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the decision making process of government in this context could not be characterised as the performance of conditions within the MRA meaning, so the Department's consent was not needed.

Public Interest

There were two objections on the grounds of public interest. One was based on the potential for dust and noise impacts on nearby residences. The second objection was from the Department on the basis of the impact of the mining claim on its ability to freehold and sell the land. Kingham DP would have refused the mining claim on these grounds also.

Decision

Kingham DP instructed the Mining Registrar to reject the application.

MINING LEASE APPLICATION*

Re Wesfarmers Curragh Pty Ltd ([2004] QLRT 46 (Kingham DP))

Application for mining lease – Rehabilitation – Cultural heritage management

Background

Wesfarmers Curragh Pty Ltd (Wesfarmers) applied for two mining leases for the purpose of significant extension to its coal-mining venture in the area north of Blackwater – the Curragh North Project. One application covered 4,859.1 hectares of land for the main coal operation and the second application covered 21.9 hectares of land for the purpose of environmental buffer.

Rehabilitation

The proposed project included requirements for significant rehabilitation activities under the *Environmental Protection Act 1994* (EP Act). The applicant sought a term of 40 years for both leases and the tribunal considered this appropriate given the large size of the project and the rehabilitation requirements. Kingham DP noted that the 40-year term would allow Wesfarmers some flexibility in its operations and ensure it had access to the land for rehabilitation purposes.

Kingham DP pointed out that whilst the obligation to carry out the rehabilitation was imposed by the EP Act, authority to access the land was only given under the MRA. Unless rehabilitation is included as a purpose for the grant of a mining lease, the lease holder will be unlikely to have authority to enter the land for purposes only relating to rehabilitation. Kingham DP recommended that consideration be given to including in the mining leases the purpose of undertaking rehabilitation as required by the environmental authority.

Cultural Heritage Management

Wesfarmers conducted extensive negotiations with the Ghungalu and Kangoulu Peoples about the protection and management of the cultural heritage of those groups. A Cultural Heritage Management Plan, under the recently commenced *Aboriginal Cultural Heritage Act 2003*, was finalised containing comprehensive provisions for investigation, consultation and protection of cultural heritage in a co-operative framework. Wesfarmers sought an order that the Plan be made confidential and Kingham DP so ordered.

Decision

Kingham DP recommended the grant of the leases.

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