

far reaching implications for industry, particularly in relation to the manner in which miscellaneous licences are applied for and processed. Among other things, the Warden will need to consider by what power a permit to enter 'native title land' may be given in light of the lack of any express power in the Mining Act or Regulations.

OBJECTION TO APPLICATION FOR MISCELLANEOUS LICENCE*

Robe River Iron Associates v Fortescue Metals Group Limited; Robe River Iron Associates v Fortescue Metals Group Ltd and FMG Pilbara Pty Ltd ([2004] WAMW 16, Warden Temby SM, Karratha Warden's Court, 26 August 2004)

Mining Act 1978 – Applications for Miscellaneous Licences – Area subject of Miscellaneous Licences encroaching on area subject of Exploration Licences applied for by other parties – Objections to Applications on the basis that Applicant's proposed activities on Miscellaneous Licences may unduly interfere with activities of holders of Exploration Licences

Applicants for miscellaneous licences

Robe River Iron Associates ('RRIA') applied for two Miscellaneous Licences:

- (a) L47/128, which was to be one of several miscellaneous licences running adjacent to the Hamersley Iron railway from Tunkawanna Creek to Rosella Siding and upon which a duplicate rail line was to be built to transport ore from RRIA's West Angelas mine; and
- (b) L47/127, upon which a temporary construction camp and an access track associated with the rail duplication project were to be located.

Objections by applicants for exploration licences

Parts of the land the subject of these applications were also the subject of two applications for exploration licences by Fortescue Metals Group Ltd (*FMG*) and one by FMG Pilbara Pty Ltd (*FMG Pilbara*). FMG lodged objections to the grant of applications L47/127 and L47/128 as the applicant for E47/1333 and E47/1303 respectively, while FMG Pilbara lodged an objection to application L47/128 as the applicant for E47/1353. The reasons for all three objections were:

- (a) the application for the relevant miscellaneous licence encroached upon the relevant exploration licence;
- (b) the activities undertaken on the relevant miscellaneous licence might unduly interfere with the objector's activities on the relevant exploration licence; and

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- (c) the applicant for the relevant miscellaneous licence (RRIA) failed to comply with the *Mining Act 1978* and Regulations.

During the proceedings, counsel for FMG and FMG Pilbara was permitted to amend the objections in regard to both miscellaneous licences to include that:

- (a) RRIA had existing miscellaneous licences for the same or similar purposes; and
- (b) the camp and access track proposed to be built on L47/127 could be located on Crown land or on tenements already held or controlled by RRIA.

RRIA led evidence that diverting the rail around the area the subject of FMG's proposed exploration licence would result in:

- (a) very substantial additional costs and delays being incurred;
- (b) the loss of advantage from government, environmental, heritage and pastoral station owner perspectives of using existing infrastructure corridors by running the rail adjacent to the Hamersley Iron rail; and
- (c) the loss of ability to interchange trains at Rosella Siding.

The objectors did not lead any evidence of their own. In response to the objectors' submission that the activities undertaken on the miscellaneous licences may unduly interfere with the objectors' activities on their exploration licences (once granted), RRIA led evidence that much of the land applied for would only be used temporarily during the construction of the duplicate railway, which was scheduled for completion by December 2005, with the construction camp only to be in operation until May 2006. Further, once the railway was completed, the land occupied by the railway would be contained within a corridor 100 metres in width from the existing Hamersley Iron railway. RRIA submitted that given the short period of time and small amount of land involved, the objectors should be able to plan their exploration activities so that they would not be interfered with by RRIA's activities.

Unlike to unduly interfere

The warden held that RRIA had proceeded with its applications in accordance with the requirements of the Act and granted the applications, finding that the objectors had failed to establish that the grants were likely to unduly interfere with the objectors' proposed exploration and mining operations.