

LANSEN & ORS V NT MINISTER FOR MINES AND ENERGY & ORS

Supreme Court of the Northern Territory (Angel J)
30 April 2007
[2007] NTSC 28

Administrative decisions – ministerial discretion – whether decision of Minister for Mines and Energy was ultra vires.

Facts:

The McArthur River Mining Project is located in the Gulf Region of the Northern Territory and is the subject of the McArthur River Project Agreement. The project is governed by the *Mining Management Act 2001* (NT) (*'Mining Management Act'*), the *Mining Act 1980* (NT), and the *McArthur River Project Agreement Ratification Act 1992* (NT). The first defendant, the Minister for Mines and Energy, was responsible for the administration of these Acts.

The third defendant, McArthur River Mining Pty Ltd, has operated an underground zinc, lead and silver mine since 1993 on the subject land. In early 2003 it was operating the mine pursuant to Authorisation 0059-01 granted by the Minister. During 2003 it proposed to convert the mine from an underground to an open-cut mine. The Minister approved this proposal in 2006 by purportedly making two decisions pursuant to the *Mining Management Act*; accepting an amended Mining Management Plan pursuant to section 41, and granting Authorisation 0059-02 in relation to environmental audits pursuant to section 38(2).

The plaintiffs are registered native title claimants to land and waters affected by the McArthur River Mining Project, and challenged the validity of the Minister's decisions. They claimed the Minister acted in excess of his powers under the *Mining Management Act* when accepting the third defendant's amended Mining Management Plan, asserting that the Act instead requires approval by way of variation or revocation of the existing grant, and a new grant of authorisation to carry out open cut mining activities pursuant to section 36. The plaintiffs acknowledged that a change in mining activities could be approved by acceptance of an amended Mining

Management Plan, but only within the terms of an existing authorisation, and only where the proposed change had been the subject of a full environmental assessment.

The plaintiffs also claimed that, even if acceptance of the amended mining plan was sufficient to authorise the conversion to open cut mining, the Minister's decision was ultimately invalid because he failed to comply with the requirements of section 82 of the *Mining Management Act* by having regard to an environmental assessment which did not comply with the Environmental Assessment Administration Procedures 1984 (NT).

The defendants submitted that the change from underground to open cut mining was the proper subject matter of an amended Mining Management Plan rather than that of an authorisation; that authorisations granted pursuant to section 36 of the *Mining Management Act* were not intended to authorise specific methods of mining; and nothing in the terms of Authorisation 0059-01 precluded its continued application to, and operation upon, open-cut mining methods.

Held, declaring the Minister's decision of no effect:

1. According to the *Mining Management Act* section 34 subs (1) and (2) the Minister must, before exercising the power or performing a function in relation to an authorisation, have regard to the mining interest held in respect of the mining activities to which the Authorisation relates and any conditions of that mining interest. In granting or varying an authorisation that relates to a mining interest held under the *Mining Management Act*, the Minister must ensure that the conditions of the authorisation are not inconsistent with the conditions of the mining interest: [25].

2. Section 35(1) of the *Mining Management Act* provides that the operator of a mining site must not carry out mining activities on the site unless the Minister has granted an authorisation: [27].
3. Under section 35(2) of the *Mining Management Act* an operator must apply for an authorisation to carry out on the site the mining activities specified in the application. Section 36(1) empowers the Minister to grant the authorisation. The terms of sections 35 and 36 require that the authorisation be read together with and subject to that specified in the application for authorisation: [34], [35], [36].
4. Authorisation 0059-01 does not authorise the third defendant's proposed open cut mining operation. The third defendant's application for authorisation in 2002 had specified the mining activities to be conducted as 'underground lead/zinc/silver mine'. It was an authorisation sought for a mine of a particular generic description, and the authorisation as sought and granted does not comprehend an open-cut mine: [37], [38].
5. The Minister's acceptance of the amended Mining Management Plan was of no effect because the plan was not in respect of the mining activities to which Authorisation 0059-01 related: [39].