Anomalous Result

In answering the final question, the Court of Appeal made the following statement:

> On any view, the amount payable by Enron [following designation of an ETD as a result of the ATE] will include interest on the transaction payments, from the date at which the obligation to make those payments accrued, until the termination date.

This does not appear to be correct. To trigger the ETD, Enron must have performed all of its s 2(a)(i) payments. Therefore, it will have no unpaid s 2(a)(i) payments comprising Unpaid Amounts owing to Yallourn on the ETD. If it has no s 2(a)(i) payments comprising Unpaid Amounts, it can have no interest payable on such amounts.

This leads to an anomalous result. If Enron is able to designate an ETD relying on the ATE, it (despite being the defaulting party) need not pay interest on previously unpaid s 2(a)(i) amounts, yet Yallourn (as the non-defaulting party) is obliged to. Yallourn can avoid this situation arising by paying its unpaid s 2(a)(i) amounts to Enron without interest following Enron's payment of its unpaid s 2(a)(i) amounts. As discussed above, this prevents the ATE as drafted from being triggered. Arguably, Yallourn would also be able to set-off from its payment of unpaid s 2(a)(i) payments interest owing by Enron under s 2(e) of the Agreement on its paid s 2(a)(i) payments. This would remove the anomalous result, but depends on Yallourn having the financial resources to pay.

QUEENSLAND

STAY OF MINING REGISTRAR'S DECISION[*]

Smith v Mining Registrar (Brisbane District) [2005] QLRT 109 (Koppenol P)

Prospecting permit – application to stay decision to cancel – whether arguable case – whether prejudice if decision not stayed

Background

This case arose out of the much-publicised development of a shopping centre at Maleny in Queensland.[1] The applicant was granted a prospecting permit for an area of land in Maleny where the landowner was constructing a supermarket and car park. Later, a condition was imposed requiring the applicant to not interfere with the activities of the landowner. The mining registrar subsequently considered further material and decided to cancel the prospecting permit.

The decision to cancel

The mining registrar came to the view that the proposed prospecting activities were a use of the land which conflicted with the use of the land as a supermarket. The mining registrar also

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[*] Matt Black, research officer to the presiding members, Queensland Land and Resources Tribunal.

[1] See, for example, M Condon "Spy games no joke in Maleny" 28 June 2005, *The Courier-Mail* <http://www.thecouriermail.news.com.au/printpage/0,5942,15749512,00.html>.

concluded that it was impossible to reconcile any future exploitation of minerals under a mining tenement with the owner's development of the land, even if viable mineral resources were found. In those circumstances, the mining registrar decided it was not possible to establish that any future mining tenement could be an appropriate use of land in the area in question.

The applicant's case

The permit holder applied for a stay of the decision. The essence of the applicant's case was that there was an area of land covered by the prospecting permit which would not be impacted upon by the landowner's construction activities and so prospecting should be allowed on that area. Koppenol P explained that for a stay to be granted, he needed to be satisfied that the applicant had a good arguable case and that the balance of convenience favoured a stay.[2]

After observing that the onus was on the applicant to show that the mining registrar's decision was arguably incorrect, the President concluded that, on the material before him, there was no evidence that there would be land not affected by the construction or supermarket activities. He accepted that there was no evidence that the mining registrar took insufficient or incorrect information into account or considered any irrelevant considerations or made any other error which could arguably mean that the mining registrar's decision was incorrect.

As to the question of disadvantage to the applicant, Koppenol P noted that the prospecting permit was operative for another 6 weeks. However, there was no evidence before the Tribunal as to what activities might occur in that period. The President was not satisfied that any disadvantage would result to the applicant during the remaining life of the permit if a stay was not granted.

Decision

Koppenol P was not satisfied that the applicant had a good arguable case on appeal and concluded that the balance of convenience did not favour the grant of a stay. The application was refused.

ENVIRONMENTAL AUTHORITY[*]

Re Clark, Bexton, Lane & Ors, Environmental Protection Agency [2005] QLRT 118 (Kingham DP)

Mining – environmental authority – whether valid

Background

The miners proposed to operate a mine and a quarry on the same site. They applied for a mining lease (and associated environmental authority) to allow them to mine sandstone in block or slab form for building purposes. The miners also applied to the Gatton Shire Council for a development approval under the *Integrated Planning Act 1997* to authorise operation of the quarry.

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2 See *Asia Pacific International Pty Ltd v Peel Valley Mushrooms Ltd* [1999] 2 QdR 458 (CA).

* Matt Black, research officer to the presiding members, Queensland Land and Resources Tribunal.