

LAND COURT OF QUEENSLAND

CITATION: *MRV Metals Pty Ltd v Chief Executive, Department of Environment and Science (No 2)* [2021] QLC 14

PARTIES: **MRV Metals Pty Ltd**
ACN 610 100 402
(appellant)

v

Chief Executive, Department of Environment and Science
(respondent)

FILE NO: EPA414-18 (EPML04238116)

PROCEEDING: Appeal against internal review decision under the
Environmental Protection Act 1994

DELIVERED ON: 26 March 2021

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 22 March 2021

HEARD AT: Heard on the papers

PRESIDENT: FY Kingham

ORDER: **1. The appeal is allowed.**
2. The decision of the Respondent dated 29 October 2018, confirming the decision of the Respondent dated 28 September 2018, that the required amount of financial assurance for environmental authority EPML04238116 under the plan of operations titled ‘Granite Belt Project Plan of Operations’, dated 28 August 2018 is \$4,730,113 to be paid by 24 December 2018 is set aside, and substituted for the following decision:

- a. the required amount of financial assurance for environmental authority EPML04238116 under the plan of operations titled ‘Granite Belt Project Plan of Operations’, dated 28 August 2018 is \$3,274,816; and**
- b. the required financial assurance is to be paid**

by 16 April 2021; and

- c. the required financial assurance is to be paid in the form required by the Scheme Manager under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

3. The parties bear their own costs of the appeal.

CATCHWORDS: ENERGY AND RESOURCES – MINERALS – ENVIRONMENTAL PROTECTION LEGISLATION – where all grounds of appeal were resolved by a preliminary determination of questions posed by the parties, or by agreement – where a guideline states an approved calculation methodology and provides a financial assurance calculator – where the parties agreed the calculator should be used to calculate the amount – where the Court found that relying on the calculator is appropriate because the miner does not rely on any site-specific expert reports and quotes – where parties agreed on the items to be included in the calculator – where parties agreed the correct amount for the financial assurance was \$3,274,816.00 – where the Court allowed the appeal and made the orders proposed by the parties

Environmental Protection Act 1994 s 295(3), s 295(4), s 527, s 528, s 530, s 530(2), s 530(4)

Land Court Act 2000 s 5(1)

Land Court Rules 2000 s 44(1)

Mineral and Energy Resources (Financial Provisioning) Act 2018

Department of Environment and Science, *Guideline ESR/2015/1758 Financial assurance under the Environmental Protection Act 1994* (Version 3.01, 2016)

Century Mining Limited v Department of Environment and Science [2021] QLC 3, cited

MRV Metals Pty Ltd v Chief Executive, Department of Environment and Science [2020] QLC 9, cited

APPEARANCES: Not applicable

- [1] MRV Metals Pty Ltd holds an environmental authority for mining activities in respect of the “Granite Belt Project”, a poly-metalliferous mine to the east of Texas, Queensland (the EA). A condition of the EA requires MRV Metals to pay a financial assurance for its rehabilitation obligations, in the amount decided by the Chief Executive of the Department of Environment and Science (DES). Until

recently, the parties have been in dispute about the amount of the financial assurance. They are now in agreement and seek consent orders from the Court.

- [2] The Court has the power to make orders if the parties consent in writing, and the Court considers it appropriate to do so.¹ As a court of statutory jurisdiction, this power is only limited by the Court's powers in the context of the appeal.²
- [3] In effect, the Court stands in the shoes of DES in deciding the appeal. The appeal is by way of rehearing, unaffected by the review decision.³ In exercising this jurisdiction, the Court has the same powers as DES,⁴ and may confirm the review decision, set it aside and substitute another decision, or set it aside and return the matter to DES, with any directions the Court considers appropriate.⁵ Where it sets aside or substitutes the decision, the Court has the same powers as DES, unless otherwise expressly stated.⁶ Any decision substituted by the Court is held to be the decision of DES.⁷
- [4] I consider I can and should make the orders sought.
- [5] MRV Metals raised 6 grounds of appeal.
- [6] Three of them related to the proper interpretation of the relevant section⁸ and whether the financial assurance could take into account existing harm from a previous activity. Those issues were important because the area had been mined previously by Texas Silver Mine Pty Ltd, which abandoned the mine without fully rehabilitating it, and went into liquidation. The liquidators disclaimed the company's environmental liabilities, and, before MRV Metals was granted the EA, the government assumed control of the land and undertook some activities. Those grounds of appeal were resolved by my determination of preliminary questions posed by the parties.⁹
- [7] The remaining grounds have since been resolved by agreement.

¹ *Land Court Rules 2000* s 44(1).

² *Land Court Act 2000* s 5(1).

³ *Environmental Protection Act 1994* (EPA) s 527.

⁴ *Ibid* s 528.

⁵ *Ibid* s 530.

⁶ *Ibid* s 530(2).

⁷ *Ibid* s 530(4).

⁸ *Ibid* s 295(4).

⁹ *MRV Metals Pty Ltd v Chief Executive, Department of Environment and Science* [2020] QLC 9.

- [8] One ground related to the validity of third-party quotes provided by MRV Metals as the basis for calculating the amount of the financial assurance. MRV Metals no longer relies on those quotes. The quotes estimated the likely rehabilitation costs for activities described in a Plan of Operations submitted on 28 August 2018. The mine went into care and maintenance in November 2019; not all activities described in that Plan were undertaken by then, and the plan has since expired.
- [9] Given those circumstances, the parties agree the amount should be calculated using a financial assurance calculator prescribed by Regulation.
- [10] The *Environmental Protection Act 1994* in force immediately before 1 April 2019 applies to the appeal.¹⁰ There is now a different system for calculating and securing rehabilitation liabilities.¹¹ However, under the Act as it then was, DES must have regard to relevant statutory guidelines and any criteria stated in a guideline made by the chief executive and prescribed under a regulation.¹² So must the Court in making the decision on this appeal.
- [11] DES has published a Financial Assurance Guideline (the Guideline) which “...describes the arrangements for financial assurance for prescribed Environmentally Relevant Activities and Transitional Environmental Programs under the *Environmental Protection Act 1994*.” Amongst other things, the guideline states an approved calculation methodology and provides a financial assurance calculator.¹³ The calculator contains default cost rates for actions taken to rehabilitate various items or types of disturbance associated with environmentally relevant activities, including mining activities.
- [12] Although a financial assurance decision may be influenced by a multitude of considerations,¹⁴ using the FA calculator in this case is appropriate because MRV Metals does not rely on any site-specific expert reports and quotes.
- [13] The other two grounds related to what items should be included and excluded from the calculation.

¹⁰ Ibid at [28].

¹¹ *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

¹² EPA s 295(3).

¹³ Department of Environment and Science, *Guideline ESR/2015/1758 Financial assurance under the Environmental Protection Act 1994* (Version 3.01, 2016) 5.

¹⁴ *Century Mining Limited v Department of Environment and Science* [2021] QLC 3 [18].

[14] The items relate to those activities undertaken by MRV Metals before the mine entered care and maintenance in November 2019. Broadly speaking, they are:

1. capping of heap leach pads 1, 3 and 4;
2. treatment of water in the processing ponds;
3. removal of launders and only the exposed parts of HDPE liners for the heap leach pads and ponds;
4. removal of 2,000 metres of piping;
5. removal of one cyanide mixing tank;
6. decontamination of the processing area; and
7. ancillary costs associated with rehabilitation, including for an intrusive site investigation, exclusion fencing, project management and monitoring.

[15] In agreeing on the items to be included in the calculation, the parties agree they have given effect to my decision on the preliminary questions.

[16] Further, the calculation excludes the costs of decommissioning or removing infrastructure that will be retained by the landowner.

[17] Adopting those assumptions, and using the financial assurance calculator, the parties agree the correct amount for the financial assurance is \$3,274,816.00.

[18] I am satisfied I should give effect to that agreement by making the orders sought.

[19] **Orders:**

1. **The appeal is allowed.**
2. **The decision of the Respondent dated 29 October 2018, confirming the decision of the Respondent dated 28 September 2018, that the required amount of financial assurance for environmental authority EPML04238116 under the plan of operations titled ‘Granite Belt Project Plan of Operations’, dated 28 August 2018 is \$4,730,113 to be paid by 24 December 2018 is set aside, and substituted for the following decision:**

- (a) the required amount of financial assurance for environmental authority EPML04238116 under the plan of operations titled ‘Granite Belt Project Plan of Operations’, dated 28 August 2018 is \$3,274,816; and**
 - (b) the required financial assurance is to be paid by 16 April 2021; and**
 - (c) the required financial assurance is to be paid in the form required by the Scheme Manager under the Mineral and Energy Resources (Financial Provisioning) Act 2018.**
- 3. The parties bear their own costs of the appeal.**