SUPREME COURT OF QUEENSLAND

CITATION:	*Qld Cooper Shale Pty Ltd & Qld Cooper Energy Pty Ltd & Qld Shale Gas Pty Ltd v Minister for Natural Resources and Mines* [2015] QSC 360
PARTIES:	**QLD COOPER SHALE PTY LTD** **ACN 164 794 272** (Applicant) **V** **MINISTER FOR NATURAL RESOURCES AND MINES** (Respondent) AND **QLD COOPER ENERGY PTY LTD** **ACN 169 397 915** (Applicant) **V** **MINISTER FOR NATURAL RESOURCES AND MINES** (Respondent) AND **QLD SHALE GAS PTY LTD** **ACN 164 794 227** (Applicant) **V** **MINISTER FOR NATURAL RESOURCES AND MINES** (Respondent)
FILE NO/S:	S792 of 2014, S793 of 2014 and S794 of 2014
DIVISION:	Trial
PROCEEDING:	Applications
ORIGINATING COURT:	Townsville

DELIVERED ON: 15 December 2015

DELIVERED AT: Townsville

HEARING DATE: 26 October 2015

JUDGE: North J

ORDER:

1. Application dismissed.

2. The applicant pay the respondent's costs of and incidental to the application to be assessed on the standard basis.

3. The parties have liberty to apply by written submission seeking a different or varied order with respect to costs within 28 days.

CATCHWORDS: STATUTORY ORDER OF REVIEW – WHETHER DECISION AFFECTED BY ERROR OF LAW – WHETHER DECISION AN IMPROPER EXERCISE OF POWER – WHETHER IRRELEVANT CONSIDERATIONS – STATUTORY CONSTRUCTION.

LEGISLATION *Judicial Review Act* 1991
Mineral Resources Act 1989
Petroleum and Gas (Production and Safety) Act 2004
Petroleum Act 1923

CASES *Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194 CLR 355

COUNSEL: P Ambrose QC and N Ferrett for the Applicant
J Horton QC with M Hickey for the Respondent

SOLICITORS: Ruddy Tomlins & Baxter for the applicants
GR Cooper, Crown Solicitor for the respondent

[2] These three applications were heard together. They raise identical questions and rely upon the same evidence.[1] The applicants are part of the "Qld Oil Shale Group" and are related corporations in that they share common shareholders and directors. Between 4 April and 7 May 2014 the applicants between them made 92 applications[2] to the respondent for exploration permits under Chapter 4 of the *Mineral Resources Act* 1989 (MRA).

[1] By orders made on 10 February 2015 in each matter I ordered that they be heard together and directed that the evidence in any one proceeding be evidence in the other.

[2] The applicant in S792/14 made eight applications; the applicant in S793/14 made 30 applications and the applicant in S794/14 made 54 applications.

[3] On 25 September 2014 the respondent, by its delegate, refused each application and the applications before me are for statutory orders of review alleging that the decisions proceeded upon an error or law or alternatively that they were affected by irrelevant considerations and thus improper exercises of power relying on s 20(2)(e) and (f) of the *Judicial Review Act* 1991 (JRA).

[4] The applications for relevant purposes were in materially identical terms.[3] While each application sought a permit for "all minerals other than coal" as contemplated by s 130(1) (a) the appendix to the application in each case specified oil shale as the "high priority target mineral".

[5] In an affidavit filed on behalf of the respondent Mr Johns, the delegate of the Minister authorised to make decisions under the MRA swore:

> "11. On 25 September 2014, pursuant to s 136(1) of the MRA, I decided to refuse the Applicants' applications ('My Decision'). In making My Decision, I took into account the prescribed criteria set out in s 137 of the MRA. I noted that the Minister's delegate, Mr Warren Cooper, had not approved the programs of work that accompanied the applications. In those circumstances, I considered that I was obliged to refuse the Applicants' applications, because the applications did not meet the criteria prescribed by s 137(2) of the MRA".[4]

[6] This decision was communicated by letter of 26 September 2014. Accompanying the letter were Mr Johns' reasons for his decision which relevantly said:

> "**Findings on material questions of fact**
>
> Based on the above documentation before me I made the following findings of fact:
>
> A. The Ministers delegate under section 137(3) of the MRA completed an assessment on 18 September 2014 and decided not to approve the program of work.
> B. The decision not to approve the program of work was based on:
> B.1. Statements supporting the applications, including the work program rationales and the responses to the information

[3] In the approved form with accompanying appendices, see for example s 133(a) to (g).
[4] Affidavit Benjamin Johns filed 23.2.2015, para 11.

request, demonstrate the work programs are not targeting mineral as defined at section 6 of the MRA and do not align with the objectives of the MRA.

B.2. Considering all documentation submitted, the applicants have not provided sufficient geological information to support the existence of oil shale as defined in the MRA.

C. It is within the powers given to me under section 136(1)(b) MRA to refuse the applications.

Reasons for the Decision

1. The work programs were not approved by the relevant delegate in accordance with section 137(3) of the MRA.

2. The approval of the work program is a prescribed criteria for the grant of an exploration permit under section 137(2) and it is a requirement under section 136(2) for the Delegate to be satisfied that all prescribed criteria are met.

3. On the basis that the work program has not been approved I made the decision to refuse the applications pursuant to section 136(1)(b) of the MRA."[5]

[7] The Minister's delegate for the purposes of considering whether to approve the program of work accompanying an application for exploration permit under s 137(2)(d) and (3) was Mr Warren Cooper. In his affidavit[6] he swore:

"**My Decision**

23. On 18 September 2014, I decided to not approve the Work Programs ('My Decision').

[5] Affidavit Benjamin Johns filed 23 February 2015, exhibit BJ-20.
[6] Filed 23 February 2015.

24. In making My Decision, I completed an assessment of the Work Programs, pursuant to s 137(3) of the MRA ('the Worksheet'). The Worksheet was predominantly completed by me prior to making My Decision. However, I finalised the Worksheet contemporaneously in formulating the reasoning and basis for a decision not to approve the work programs. I completed the Worksheet as at the date of formal signing of the Worksheet, which marks the decision date. Exhibited and marked **'WC-12'** is a true copy of the Technical Assessment worksheet and attachments, dated 18 September 2014."

In his affidavit he went on to identify the materials or information to which he had regard when making his decision and then he swore:

"**Reasons for decision**

26. Having considered all of the above information, the following matters formed the basis for My Decision:

(a) In reviewing the statements supporting the applications, the work program rationales, and the responses to information provided by the Applicants, I believed that the work programs proposed by the Applicants were not targeting a 'mineral' as defined by s 6 of the MRA and therefore did not align with the objectives of the MRA.

(b) Further, in considering all of the documentation submitted, I considered that the Applicants did not provide sufficient geological information to support the existence of 'oil shale', as defined in the MRA.

(c) I formed the belief that the exploration rationale, target stratigraphy, proposed drilling techniques, and work program clearly described activities that were related to petroleum exploration. Further, I considered the activities were targeting unconventional petroleum resources in the nominated target

stratigraphy, and not mineral exploration for oil shale."

[8] In both written and oral submissions before me both parties referred to and relied upon provisions of both the MRA and also the *Petroleum and Gas (Production and Safety) Act* 2004 (PGA) in support of their respective contentions.

The Legislation

[9] At this stage it is convenient to set out provisions from the relevant legislation.

[10] The MRA relevantly provides:-

"**2 Objectives of Act**

The principal objectives of this Act are to—

(a) encourage and facilitate prospecting and exploring for and mining of minerals;

(b) enhance knowledge of the mineral resources of the State;"

"**3A Relationship with petroleum legislation**

(1) This section does not apply to a coal or oil shale mining tenement.

Note—

For the relationship between this Act and the Petroleum and Gas (Production and Safety) Act—

(a) in relation to coal or oil shale mining tenements, see chapter 8; or

(b) otherwise, see the Petroleum and Gas (Production and Safety) Act, section 6 (Relationship with Mineral Resources Act).

(2) Subject to subsections (3) to (9), the *Petroleum Act 1923* and the Petroleum and Gas (Production and Safety) Act do not limit or otherwise affect—

(a) the power under this Act to grant or renew a mining tenement over land (the ***overlapping land***) in the area of a petroleum authority; or

(b) a mining tenement already granted over land (also the ***overlapping land***) in the area of an existing petroleum authority.

6 Meaning of *mineral*

…

(2) Subject to subsection (3), each of the following is a ***mineral***—

…

(c) coal seam gas;

…

(f) a product that may be extracted or produced by an underground gasification process for coal or oil shale (***mineral (f)***) and another product that may result from the carrying out of the process (also ***mineral (f)***);

Examples of underground gasification processes—

combustion, consumption, heating, leaching and reaction

Example of another product—

gas desorbed as a result of an underground gasification process"

…

(i) oil shale

Note—

For what is oil shale, see section 318AD.

(3) Despite subsections (1) and (2)—

…

(c) mineral (f) is only a mineral if—

(i) the coal or oil shale, from which it is extracted or produced, is held under a mineral development licence and it has been added to the licence under section 208; or

(ii) the coal or oil shale, from which it is extracted or produced, is held under a mining lease and it is specified in the lease …

"**6A Meaning of *mine***

(1) ***Mine*** means to carry on an operation with a view to, or for the purpose of—

(a) winning mineral from a place where it occurs; or

(b) extracting mineral from its natural state; or

…

(4) However, extracting does not include—

(a) a process in a smelter, refinery or anywhere else by which mineral is changed to another substance; "

6D Types of authority under Act

The types of authority under this Act are—

(a) a prospecting permit; and

(b) a mining claim; and

(c) an exploration permit; and

(d) a mineral development licence; and

(e) a mining lease.

"**130 Exploration permit to specify minerals sought**

(1) Except where subsection (2) is applied, an exploration permit shall be granted in respect of—

(a) all minerals other than coal; or

(b) coal."

"**133 Application for exploration permit**

An application for an exploration permit may be made by an eligible person and shall—

(a) be in the approved form; and

...

(g) be accompanied by—

(i) a statement, separate from the statement mentioned in paragraph (f), detailing the applicant's financial and technical resources; and

(ii) if the application relates to land that includes sub-blocks of land that do not have a common boundary—a statement detailing how the work proposed can be carried out using competent and efficient mineral exploration practices; and

(iii) if the application relates to an area of land that exceeds the area prescribed for the mineral or minerals—a statement about why the applicant requires more than the prescribed area of land; and

(iv) proof of the applicant's identity; and

(v) the application fee prescribed under a regulation."

"**137 Prescribed criteria for grant of exploration permit**

(1) This section states the criteria (***prescribed criteria***) for the grant of an exploration permit under part 2 or 3.

(2) The criteria are as follows—

…

(d) the Minister has, under subsection (3), approved the program of work that accompanied the application for the exploration permit;

…

(3) In deciding whether to approve the program of work, the Minister must have regard to the following matters—

(a) the extent of the proposed activities in the proposed area of the exploration permit;

(b) when and where the applicant proposes to carry out exploration activities in the proposed area of the exploration permit;

(c) whether the applicant has the financial and technical capability for carrying out the work."

"**318A Main purposes of ch 8**

The main purposes of this chapter are, in conjunction with the Petroleum and Gas (Production and Safety) Act, chapter 3, and the *Petroleum Act 1923*, part 6F, to—

(a) clarify rights under this Act to mine coal seam gas; and

Note—

For the limited entitlement to mine coal seam gas under this Act, see part 8, division 1.

(b) address issues arising for coal seam gas mining under this Act, and, in particular, issues arising when a coal mining lease or an oil shale mining lease and a petroleum lease are granted over the same area; and

(c) provide security of tenure to protect existing operations and investments relating to coal, oil shale and petroleum; and

Note—

See also chapter 15, part 2, division 6."

"**318AA How main purposes are achieved**

(1) The main purposes of this chapter are achieved by—

(a) ensuring commercial coal seam gas production (other than for use for mining under a coal mining lease or an oil shale mining lease) is carried out under a relevant petroleum lease; and

Note—
See, however, chapter 15, part 2, division 6.

(b) providing for processes to decide the priority of overlapping coal mining leases or oil shale mining leases and petroleum tenure applications or potential applications; and

"**318AD What is *oil shale***

Oil shale is shale or other rock (other than coal) from which a

gasification or retorting product, as defined in the Petroleum and Gas (Production and Safety) Act, may be extracted or produced."

[11] The PGA relevantly provides:

"**3 Main purpose of Act**

(1) The main purpose of this Act is to facilitate and regulate the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry, in a way that—

(a) manages the State's petroleum resources—

(i) in a way that has regard to the need for ecologically sustainable development; and

(ii) for the benefit of all Queenslanders; and

(b) enhances knowledge of the State's petroleum resources; and

(c) creates an effective and efficient regulatory system for the carrying out of petroleum activities and the use of petroleum and fuel gas; and

(2) In this section—

petroleum activities means—

(a) the exploration, distillation, production, processing, refining, storage and transport of petroleum; and

(b) the distillation, production, processing, refining, storage and transport of fuel gas; and

(c) authorised activities for petroleum authorities; and

(d) other activities authorised under this Act for petroleum authorities."

"**10 Meaning of *petroleum***

(1) ***Petroleum*** is—

(a) a substance consisting of hydrocarbons that occur naturally in the earth's crust; or

(b) a substance necessarily extracted or produced as a by-product of extracting or producing a hydrocarbon mentioned in paragraph (a); or

(c) a fluid that—

(i) is extracted or produced from coal or oil shale by a chemical or thermal process or that is a by-product of that process; and

(ii) consists of, or includes, hydrocarbons; or

Example of a fluid that is petroleum under paragraph (c)—

mineral (f)

(d) another substance prescribed under a regulation, consisting of, or including, hydrocarbons; or

(e) a gas, that occurs naturally in the earth's crust, as prescribed under a regulation.

(2) A substance mentioned in subsection (1)(c) is a ***gasification or retorting product***.

(3) To remove any doubt, it is declared that ***petroleum*** does not include any of the following—

(a) alginite;

(b) coal

(c) lignite;

(d) peat;

(e) Oil shale;

(f) torbanite;

(g) water."

The Rival Contentions

[12] The applicants' submission focussed upon paragraph 26 of the affidavit of Mr Cooper.[7] Concerning paragraph 26(b) and Mr Cooper's conclusion that the applicants "did not provide sufficient geological information to support the existence of 'oil shale'" they submitted that this statement revealed that Mr Cooper had taken into account an irrelevant consideration and hence his decision and in turn the decision of Mr Johns involved an improper exercise of power within s 20(2)(e) of the JRA. Pointing to the objectives of the MRA found in s 2 and to the sections found in Chapter 4 including ss 131 and 133 and then comparing those sections in Chapter 4 which concerned exploration with mineral development licences covered by Chapter 5 and provisions concerning mining leases covered by Chapter 6 it was submitted that it was not necessary that an applicant for an exploration permit demonstrate the likely existence of a mineral as a prerequisite to obtaining a permit to explore for the mineral. Concerning Mr Cooper's reasons at paragraphs 26(a) and (c) of his affidavit[8] and by reference to certain statements by Mr Cooper contained in the attachments to his worksheet and documents exhibited to his affidavit. The applicant submitted that Mr Cooper misinterpreted the applications lodged by the applicants concluding that the applicants' intention was not to explore for oil shale but instead a petroleum product. Noting that s 6(2)(i) defined "oil shale" to be a mineral and the use of that term in s 6(2)(f) which defined the product of the process referred to, called "mineral (f)", to be a mineral the applicants drew attention to s 318AD which defined oil shale by reference to shale or rock from which a "gasification or retorting product" within the meaning of that term as defined in the PGA might be extracted and produced. The applicants submitted that that term, found within s 10(2) of the PGA in turn imported the substance mentioned in s 10(1)(c) of the PGA within the meaning of "mineral (f)" and hence became a mineral within the MRA. Thus, it was submitted, Mr Cooper's conclusion that the applicants were targeting an unconventional petroleum resource and not a mineral involved an error of law contrary to s 20(2)(f) of the JRA.

[13] In response the respondents pointed to the meaning of "mineral (f)" found in s 6(2)(f) of the MRA and noted that the section referred to "underground gasification process" and to the product that may thereby be extracted or produced or that which may result from the carrying out of such process. The respondents compared that with the "petroleum" defined by s 2(1)(c) of the PGA which might be extracted or produced using a "chemical or thermal process". The respondents submitted that s 318AD of the MRA did not import into the MRA the oil shale definition provided in s 318AD for all purposes and with it the "gasification or retorting product" referred to in s 10(2) and thereby s 10(1)(c) of the PGA. The respondent pointed out that s 318AD was found in Chapter 8 of the MRA which contained "Provisions for coal seam gas" and that Division 2 of Chapter 8, which included s 318AD, contained definitions for Chapter 8. The respondent contended that the applications for an exploration permit were correctly refused because on the uncontradicted evidence of Mr Cooper it was not demonstrated that oil shale, which was the high priority target material sought

[7] Quoted at para [6] above.
[8] Refer para [6] above.

under the permit the exploration programme for which was the subject of the applications, could exist in the area covered by the permits. Further the respondent submitted that this finding was one of fact not of law. It was submitted that in order for there to be an application for a permit within s 131(1)(a) of the MRA it was necessary that the object of the exploration be a mineral within the meaning of that Act hence if the possible existence of the target mineral could not be demonstrated within the programme of work required to be specified in the application pursuant to s 133(f)(i) the application might be properly refused under s 137(3)(a) of the MRA.

Discussion

[14] Central to the applicants' contention that the decisions challenged were affected by an error of law is the applicants' suggested interpretation of the MRA and that s 318AD imports into that Act the "gasification or retorting product" referred to in the definition of petroleum found in s 10(1)(a) and s 10(2) of the PGA with the result that a fluid that consists of or includes hydrocarbons that may be extracted or produced from coal or oil shale by a chemical or thermal process is a mineral within s 6 of the MRA, specifically "mineral (f)" within s 6(2)(f). If this interpretation is correct, the applicants submit, then Mr Cooper's decision and with it the decision of Mr Johns that the applicants were targeting an unconventional petroleum resource and not a mineral and hence not entitled to an exploration permit under the MRA[9] was based upon an incorrect interpretation.

[15] There are indications in the MRA pointing against the interpretation that s 318AD is a definition with an operation limited to Chapter 8. The applicants pointed to the note included after the reference to the mineral "oil shale" found within s 6(2)(i) and also to the note found after s 10(1)(c) of the PGA which expressly referred to "mineral (f)".

[16] Thus the MRA together with its important counterpart[10] the PGA contain somewhat contrary indications creating an ambiguity as to whether the definition "what is oil shale" found at s 318AD of the MRA is to play a wider role within the MRA particularly informing the term "oil shale" within s 6(2)(i) but importantly giving added content to the concept "mineral (f)" found within s 6(2)(f).

[17] In *Project Blue Sky Inc & Ors v Australian Broadcasting Authority*[11] the plurality[12] said:[13]

> *"Conflicting statutory provisions should be reconciled so far as is possible*
>
> 69 The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined "by reference to the language of the instrument viewed as a whole". In *Commissioner for Railways (NSW) v Agalianos*, Dixon CJ

[9] See paras 26(a) and (c) of Mr Cooper's affidavit quoted at para [6] above.
[10] The significance of which will be discussed below.
[11] (1998) 194 CLR 355
[12] McHugh, Gummow, Kirby & Hayne JJ.
[13] (198) 194 CLR 355 at [69]–[71].

> pointed out that "the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed". Thus, the process of construction must always begin by examining the context of the provision that is being construed.
>
> 70 A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court "to determine which is the leading provision and which the subordinate provision, and which must give way to the other". Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.
>
> 71 Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. In *The Commonwealth v Baume* Griffith CJ cited *R v Berchet* to support the proposition that it was "a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent".”
>
> (Footnotes omitted)

[18] When regard is had to the objectives of the MRA in s 2[14] and to s 3A which concerns the relationship with “petroleum legislation” while comparing those with s 318A[15] which expresses the main purposes of Chapter 8 and its operation in conjunction with the PGA it can be seen that one of the objectives of the MRA is to provide for its operation consistent with the objectives of the Act in parallel with the objectives of the PGA avoiding wherever possible overlap or conflict.[16] The foregoing, reinforced by the heading of Division 2 to Chapter 8 of the MRA leads me to the conclusion that, save in so far as the MRA deals with coal seam gas under Chapter 8 and does so in conjunction with the PGA and the *Petroleum Act* 1923, the intention of the MRA is that it operates and has effect independently of the PGA and without overlap and thus potential incoherence and consequent conflict or inconsistency. Thus in so far as Chapter 8 of the MRA concerns provisions for coal seam gas it contains within itself a definition of oil shale in s 318AD that draws in part upon provisions of the PGA but only for the purposes of coal seam gas exploration and mining. But in so far as a mining tenement, be it an exploration permit, a mineral development licence or a mining lease[17] is concerned with coal or oil shale it is the MRA which informs the rights, interests and obligations including the meaning or understanding of the mineral called “mineral (f)”.

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[14] Some of which are relevantly quoted at [9] above.
[15] See para [9] above.
[16] For example consider s 3 of the PGA at [10] above and also s 6 of the PGA.
[17] Consider the definition of “mining tenement” found in Schedule 2 to the MRA.

[19] To adopt a construction of the MRA that draws upon s 10 of the PGA to inform the meaning or understanding of "mineral (f)" contended by the applicants leads to a potential incoherence by introducing into concept "mineral (f)" fluids or substances that may include hydrocarbons more consistently covered by the PGA. The construction of the MRA contended for by the respondent is more consistent with the language and purpose of the provisions of the MRA and seems to give effect to harmonious goals when considered in light of the PGA. It follows that the decision from Mr Cooper (and the consequential decision of Mr Jones) not to approve the work programme because he considered the applicants were targeting petroleum rather than a mineral within the meaning of the MRA and that consequently the applications for exploration permits did not satisfy Part 2 of Chapter 4 of the MRA[18] did not proceed upon an error of law.

[20] The foregoing disposes of the applicant's submission that the challenged decision is effected by an error of law involving the interpretation of the MRA. The applicants submitted that the decision of Mr Cooper (and with it Mr Johns) was affected by error in so far as he concluded that the applicants had not provided sufficient geological information to support the existence of "oil shale" and that the work programme described activities that were related to petroleum exploration.[19] I accept the respondent's submission that Mr Cooper's decision in this respect involves a finding of fact not a question of law which is not reviewable.[20]

[21] I turn to the applicants' contention that the issue whether it could be demonstrated that oil or shale existed was, for the purposes of a grant of an exploration permit under s 136 of the MRA, an irrelevant consideration and hence the refusal of the applications were an improper exercise of power under s 20(2)(e) of the JR.

[22] It is relevant, to refer to guidelines issued under the MRA designed as a guide for those making an application under the Act[21] and in particular with reference to the "work programme", the specification and description of which is required as part of an application,[22] which is the subject of some guidelines.[23] In particular the guidelines require an explanation of the rationale behind the work programme:

> "**Rationale**
>
> We require an explanation of the rationale behind the proposed work program, including an overall rationale for the complete work program and a more detailed rationale for years 1 and 2 only. Please be aware that your application could be competing with others for the same area.
>
> The rationale for the work program statement needs to address the following questions:

[18] See s130A and s 133(e) which specifically refer to "mineral".
[19] See paragraphs 26(b) and (c) of Mr Cooper's affidavit at [6] above.
[20] See *Australian Broadcasting Tribunal v Bond & Ors* (1990) 170 CLR 321 at 355-356.
[21] See exhibit WC11 to the affidavit of Mr Cooper filed 23 February 2015 at p 41 ff.
[22] See s 133(f)(i) of the MRA.
[23] See exhibit WC11 to the affidavit of Mr Cooper at p 68 ff.

- **What are you looking for?**

  - Explain what the high-priority target mineral/s are to be explored for during the permit term (include where possible, the methodology, preferred techniques, definitive parameters to be used)

- **Why do you think you will find it here?**

  - Provide a summary of the covering research, previous work and the exploration model developed to support the proposed work program which is being undertaken to advance the exploration model.

  - Where little or no research is currently available, applicants should state there is no known research to reference but explain why they have chosen that exploration model.

  - Include (where practicable or necessary) the regional geological settings, including, as appropriate, basin models, structure, mineralisation, deposits, specifically addressing the geological aspects of the area applied.

- **How do you propose to go about finding it?**

  - Significant work programs must include a map in the rationale that shows the geological aspects of the application area with an outline of the permit area applied for.

  - Provide an outline illustrating how the exploration is to be undertaken during each year of the permit term and describe when and where the activities will occur (when and where should be a generally (sic) locality or in relation to geological references).

  - Describe the work program for each year of the proposed permit term, including the machinery and equipment to be used each year to undertake the exploration work.

Please note: Small explorers, (opals and gemstones) need only supply a basic rationale to support the application, but it must accurately reflect exploration activities and known understanding of the geology."[24]

[24] See affidavit Warren Cooper filed 23 February 2015 exhibit WC11, at p 73-74.

[23] It is that statement of rationale within the guidelines that Mr Cooper refers to which formed the basis for his decision as explained in paragraph 26 of his affidavit.[25] Regard might be had to the objects of the MRA including, in addition to those provided in s 2(a) and (b) set out above[26] but also to other objects including that - to minimise land use conflict with respect to prospecting, exploring and mining;[27] to encourage environmental responsibility in prospecting, exploring and mining;[28] and to encourage responsible land care management in prospecting, exploring and mining.[29] Additionally regard might be had to the scheme of the Act, one designed to achieve a harmonious operation of the MRA with the objects of the PGA. One can readily accept that the activities involved in exploration under a permit may cause vexation or disruption to a range of persons including pastoralists or farmers, indigenous traditional owners and others who might have overlapping rights under the PGA. Further exploration activities can raise legitimate concerns in respect of environmental or land care issues. In my view therefore relevant considerations, as part of the consideration of an application for an exploration permit under s 133(1), leading to or involving a consideration of the prescribed criteria for the grant of an exploration permit under s 137(3), might include the scope of the work and potential disruption to others and whether the proposed works might be fruitless but in the undertaking cause harm to others. To put it more bluntly it seems a relevant consideration to an assessment as to whether to grant an exploration permit under the MRA for the decision maker to have a degree of satisfaction that the applicants are targeting minerals within the meaning of that Act and not some other object other than a mineral and with some prospect of success. In order to make such an assessment the programme of works and the related technical research and data would necessarily have to be considered.

[24] For the reasons given I conclude that the applicants have made out neither basis for a challenge to the decisions the subject of the applications. Each of the three applications should be dismissed.

[25] The orders which I will make in each application are:

1. Application dismissed.

2. The applicant pay the respondent's costs of and incidental to the application to be assessed on the standard basis.

3. The parties have liberty to apply by written submission seeking a different or varied order with respect to costs within 28 days.

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[25] See para [6] above.
[26] See para [9].
[27] Section 2(c)
[28] Section 2(d).
[29] Section 2(g).