SUPREME COURT OF QUEENSLAND

CITATION:	*Icon Energy Limited v Chief Executive, Department of Resources* [2023] QSC 227
PARTIES:	**ICON ENERGY LIMITED** ACN 058 454 569 (applicant) **v** **CHIEF EXECUTIVE, DEPARTMENT OF RESOURCES** (respondent)
FILE NO/S:	BS No 14144 of 2022
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	17 October 2023
DELIVERED AT:	Brisbane
HEARING DATE:	5 September 2023
JUDGE:	Brown J
ORDER:	**The parties should provide a draft order as to the declarations which I have found should be made and as to costs within seven days, failing which the matter will be listed for a short hearing as to the form of relief.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – ERROR OF LAW – where a delegate of the respondent refused to accept an application by the applicant to renew its authority to prospect pursuant to the provisions of the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) – where the applicant contends that the respondent's delegate made errors of law in assessing and refusing the renewal application – whether the respondent's decision to reject the applicant's renewal application should be set aside *Acts Interpretation Act 1954* (Qld) *Judicial Review Act 1991* (Qld) *Mines Legislation (Streamlining) Amendment Act 2012* (Qld) *Petroleum and Gas (Production and Safety) Act 2004* (Qld) *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135 *Foley v Padley* (1984) 154 CLR 349

MZAPC v Minister for Immigration and Border Protection (2021) 95 ALJR 441
Nathanson v Minister for Home Affairs (2022) 403 ALR 398
Plaintiff M70/2011 v Minister for Immigration and Citizenship (2011) 244 CLR 144
Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd (1991) 25 NSWLR 541
R v A2 (2019) 269 CLR 507
R v Connell; Ex parte Hetton Bellbird Collieries Ltd (1944) 69 CLR 407
Registrar of Titles (WA) v Franzon (1975) 132 CLR 611
Thiess v Collector of Customs (2014) 250 CLR 664
Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707

COUNSEL: D P O'Brien KC for the applicant
M T Hickey for the respondent

SOLICITORS: HopgoodGanim Lawyers for the applicant
Crown Law for the respondent

[1] The applicant, Icon Energy Limited (**Icon**), applies to set aside a decision of a delegate of the respondent, the Chief Executive, Department of Resources (**Chief Executive**), made on 17 October 2022 to refuse to accept an application for renewal of ATP Permit No. 855 (**ATP 855**) (the **Renewal Application**) pursuant to the provisions of the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) (***P&G Act***). The question for the Court is whether that decision should be set aside on the basis that one of the grounds of judicial review set out in the Amended Application for a Statutory Order of Review (the **Amended Application for Statutory Order of Review**) under s 20 of the *Judicial Review Act 1991* (Qld) (***JRA***) is established. The Chief Executive contends that the delegate's decision was made in accordance with law and that Icon's application should be dismissed.

[2] There is no issue that the pre-conditions under the *JRA* to the making of a judicial review application have been satisfied. The Chief Executive concedes that Icon is an aggrieved person who has standing to apply and that the decision is a reviewable decision under the *JRA*. No question was raised as to the validity of the delegation of the decision by the Chief Executive to the decision-maker.[1]

[1] As to the power of delegation, see s 857 of the *Petroleum and Gas (Production and Safety) Act 2004*

[3] The matters which the Court must consider are as follows:

(a) the primary issue is whether the decision-maker erred in law in assessing and refusing to accept the Renewal Application pursuant to s 842 of the *P&G Act*. In particular, Icon contends that the decision-maker:

(i) misconstrued the meaning of "address" in s 82(1)(e) of the *P&G Act* in determining that the Renewal Application did not "address the capability criteria" in proceeding on the basis that it involved an assessment of the quality of the information in the Renewal Application as to financial resources to carry out authorised activities for the proposed authority;

(ii) misconstrued the meaning of "capability" as to financial resources in construing "capability" as to financial resources as requiring that all the funds required to carry out the authorised activities for the authority be "readily available", when there was no such requirement in the *P&G Act*; and

(iii) misconstrued the question to which he had to direct himself in determining whether the requirement under s 82(1)(e) of the *P&G Act* had been met, which required the decision-maker to inquire whether information had been provided which was directed to the financial resources available to Icon to carry out authorised activities, not whether the Minister could be satisfied that Icon had sufficient financial resources.

(b) whether the decision-maker failed to have regard to relevant considerations, namely all of the financial information in the Renewal Application including information incorporated by reference which had been provided to the decision-maker;

(c) whether the decision to refuse to accept the Renewal Application was so unreasonable that no decision-maker in the delegate's position acting reasonably would have made that decision;

(Qld) (***P&G Act***).

(d) in the event the Court determines there were jurisdictional errors, whether those errors were material; and

(e) what relief should be granted if Icon is successful.

[4] Three other grounds identified in the Amended Application for Statutory Order of Review were not raised in submissions and will therefore not be considered.

[5] During oral submissions, Icon's counsel conceded that the grounds of failure to have regard to relevant considerations and unreasonableness turned on a question of construction of the *P&G Act* and that those grounds would not succeed if the Court did not adopt the construction of the *P&G Act* propounded by Icon. Conversely, if Icon is successful in relation to one of the grounds in paragraph 3(a) above, it will be unnecessary to consider paragraphs 3(b) and (c).

Legislative Background

[6] The main purpose of the *P&G Act*, which is set out in s 3, is said to be 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
>
> …
>
> (c) creates an effective and efficient regulatory system for the carrying out of petroleum activities and the use of petroleum and fuel gas; and
>
> (d) encourages and maintains an appropriate level of competition in the carrying out of petroleum activities;
>
> …

[7] When an application for renewal is made it must first be considered by the "relevant person" who, in the present case, is the Chief Executive under s 842 of the *P&G Act*. Section 842 of the *P&G Act* was the relevant provision under which the decision-maker made the decision to refuse to accept the Renewal Application. It

extends to any application made under the *P&G Act* and is not confined to an application to renew an authority to prospect (**ATP**).

[8] Section 842 provides that:

> **842 Requirements for making an application**
>
> (1) This section applies to a purported application, other than to the Land Court, not made under the requirements under this Act for making the application.
>
> (2) The relevant person for the application must refuse to receive or process the purported application.
>
> (3) However, the relevant person may decide to allow the application to proceed and be decided as if it did comply with the requirements if the relevant person is satisfied the application substantially complies with the requirements.
>
> (4) If the relevant person decides to refuse to receive or process the purported application—
>
> (a) the relevant person must give the applicant notice of the decision and the reasons for it; and
>
> (b) the relevant person must refund the application fee to the applicant.
>
> (5) In this section—
>
> ***relevant person***, for an application, means—
>
> (a) the chief inspector, if the application is made under—
>
> (i) section 622 or 728; or
>
> (ii) chapter 9, part 1; or
>
> (b) otherwise—the chief executive.

[9] The requirements for making an application to renew an ATP are set out in ss 81 and 82 of the *P&G Act*. Those sections provide:

> **81 Conditions for renewal application**
>
> (1) An authority to prospect holder may apply to renew the authority only if none of the following is outstanding—
>
> (a) annual rent for the authority;
>
> (b) a civil penalty under section 76 for nonpayment of annual rent;

(c) interest payable under section 588 on annual rent or a civil penalty;

(d) a royalty-related amount payable by the holder;

(e) security required for the authority, as required under section 488.

(2) Also, the application can not be made—

(a) more than 60 business days before the end of the term of the authority; or

(b) after the authority has ended.

82 Requirements for making application

(1) The application must—

(a) be in the approved form; and

(b) state whether or not the work program for the authority to prospect has been complied with; and

(c) if the work program has not been complied with—state details of, and the reasons for, each noncompliance; and

(d) include a proposed later work program for the renewed authority; and

(e) **address the capability criteria**; and

(f) **include information about the matters that, under sections 84 and 86, must or may be considered in deciding the application**; and

(g) state whether or not the applicant has complied with chapter 5, part 7, for reports required to be lodged in relation to the authority; and

(h) be accompanied by—

(i) the application fee prescribed under a regulation; and

(ii) if the application is made less than 20 business days before end of the term of the authority—an amount that is 10 times the application fee.

(2) The proposed work program must comply with the later work program requirements.

(emphasis added)

[10] As to the capability criteria, they are relevantly defined in relation to a renewal application in sch 2 to the *P&G Act* and are referable to the matters in s 43(2) of the *P&G Act*. Section 43 of the *P&G Act* provides:

> **43 Criteria for decisions**
>
> (1) The matters that must be considered in deciding whether to grant an authority to prospect or deciding its provisions include—
>
> (a) any special criteria; and
>
> (b) the extent to which the Minister is of the opinion that the tenderer is capable of carrying out authorised activities for the authority, having regard to the tenderer's—
>
> (i) financial and technical resources; and
>
> (ii) ability to manage petroleum exploration and production; and
>
> (c) the applicant's proposed initial work program.
>
> (2) The matters mentioned in subsection (1)(b) are the ***capability criteria***.
>
> (3) A person ***satisfies*** the capability criteria if the minister forms the opinion mentioned in subsection (1)(b).

[11] The role of the "relevant person" under s 842 of the *P&G Act* is a principal point of contention between the parties. Both sides raised s 843 of the *P&G Act* as relevant to the context of the construction of s 842. Section 843 provides:

> **843 Request to applicant about application**
>
> (1) For an application under this Act, the relevant person for the application may, by notice, require the applicant to do all or any of the following within a stated reasonable period—
>
> (a) complete or correct the application if it appears to the relevant person to be incorrect, incomplete or defective;
>
> (b) give the relevant person or another stated officer of the department additional information about, or relevant to, the application;
>
> *Examples—*
>
> 1 The application is for a petroleum lease. The chief executive may require additional information about a document given with the

application, for example, a document prepared by an appropriately qualified person, independently verifying reserve data given in the proposed development plan for the lease.

2 The application is for a potential commercial area. The chief executive may require additional information about drilling and production test results.

(c) give the relevant person or another stated officer of the department an independent report by an appropriately qualified person, or a statement or statutory declaration, verifying all or any of the following—

(i) any information included in the application;

(ii) any additional information required under paragraph (b);

(iii) if the application is for a petroleum tenure—that the applicant meets the relevant capability criteria under chapter 2.

(2) For subsection (1)(b), if the application is for a petroleum authority, a required document may include a survey or resurvey of the area of the proposed authority carried out by a person who is a cadastral surveyor under the *Surveyors Act 2003*.

(3) For subsection (1)(c), the notice may require the statement or statutory declaration—

(a) to be made by an appropriately qualified independent person or by the applicant; and

(b) if the applicant is a corporation—to be made for the applicant by an executive officer of the applicant.

…….

information includes a document.

relevant person, for an application under this Act, means—

(a) the chief inspector, if the application is made under—

(i) section 622 or 728; or

(ii) chapter 9, part 1; or

(b) otherwise—the chief executive.

[12] If an application is accepted and not refused under s 842(2), the *P&G Act* provides for the Minister to decide whether to approve or not approve the application. In that regard, ss 84 and 86 of the *P&G Act* relevantly provide:

> **84 Deciding application**
>
> (1) The Minister may grant or refuse the renewal.
>
> (2) However—
>
> (a) before deciding to grant the renewal, the Minister must decide whether to approve the applicant's proposed later work program for the renewed authority to prospect; and
>
> (b) the renewal cannot be granted unless—
>
> (i) the proposed program has been approved; and
>
> (ii) the applicant satisfies the capability criteria; and
>
> (iii) the Minister is satisfied the applicant—
>
> (A) continues to satisfy any special criteria that applied for deciding the application for the authority to prospect being renewed; and
>
> (B) has substantially complied with the authority to prospect being renewed; and
>
> (iv) a relevant environmental authority for the renewed authority to prospect has been issued.
>
> **86 Criteria for decisions**
>
> The matters that must be considered in deciding whether to grant the renewal or deciding the provisions of the renewed authority include—
>
> (a) the work program criteria; and
>
> (b) whether the applicant continues to satisfy the capability criteria and any special criteria.

[13] The Chief Executive helpfully set out the broader context of the relevant provisions of the *P&G Act* to the application process to which I have also had regard.

Background Facts

[14] Icon is a Queensland-based oil and gas exploration company which is listed on the Australian Securities Exchange (**ASX**). Icon was, at the time the Renewal Application was made, the 100% holder of ATP 855. The term of ATP 855 was 12

years, commencing on 1 November 2010 and ending on 31 October 2022. In simple terms, ATP 855 provided Icon, together with its joint venture parties at the time, the right to explore for petroleum in accordance with the terms and conditions of ATP 855 and the provisions of the *P&G Act* relating to ATPs.

[15] According to Icon, Icon together with its joint venture parties have expended approximately $165 million on ATP 855. That was not the subject of challenge in the application.

[16] As a result of the work done by Icon, a number of areas covered by ATP 855 were declared to be potential commercial areas. Potential commercial areas are declared under the *P&G Act* if the Minister is satisfied that petroleum production or storage in the area to be declared is not, and will not soon be, commercially viable, but is likely to become viable within 15 years.[2]

[17] With ATP 855 due to expire on 31 October 2022, Icon applied for a renewal of ATP 855 on 3 and 4 October 2022. The Renewal Application was supported by various documents, including a Financial Capability Statement in the following terms:

> "**FINANCIAL CAPABILITY**
>
> Icon Energy Limited (ACN: 058 454 569) (Icon) is a public company listed on the Australian Stock Exchange (ASX) as a limited liability company. Icon's ASX code is ICN.
>
> The audited financial statements for Icon for the financial year ending June 30 2021, including exploration expenditure, are detailed in Icon's Annual Report 2021.
>
> The most recent ASX announcement of the Quarterly Activities Statement and Cash Flow Report was released to the market on 29 July 2022.
>
> Icon Energy has a proven track record of over 20 years of operations in the Australian and USA petroleum exploration and production sector.
>
> Icon has access to both domestic and international capital markets through which funds can be raised for exploration and appraisal projects such as ATP 855.
>
> Most of Icon's capital has been raised through the ASX stock market listing.

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[2] Section 90 of the *P&G Act*.

Since Incorporation, Icon has raised over $100 Million for exploration projects in Australia and overseas. These funds have been raised through the ASX listing, rights Issues, equity issues, placements, farmouts, sales of oil and gas and R&D activities.

Icon is solely focussed on the appraisal, commercialisation and development of the world class gas resource it has discovered in ATP 855.

ATP 855 is located in the Nappamerri Trough, which is the largest and deepest of the Palaeozoic troughs in the Cooper Basin. The unique geological setting of this unconventional, basin-centred gas resource, combined with the cumulative knowledge and expertise that Icon has gained since beginning exploration in the permit, lend itself to the application of new scientific methodology and modern techniques that Icon is preparing to implement.

A total of six deep exploration wells have been drilled in ATP 855, which tested for gas production for up to three months. All wells were declared discoveries.

The gas resource estimates within ATP 855, were determined by DeGolyer and MacNaughton, at 28.5 Trillion Cubic Feet (Tcf) of Gross Unconventional Prospective Raw Natural Gas Resource over all PCAs, and 1.57 Tcf of 2C Contingent Gas Resource determined within defined areas surrounding the five wells tested. These resource estimates were evaluated in accordance with the Petroleum Resources Management System (March 2007).

Icon owns a 100% interest in the tenement and the gas resource.

Icon has expended over $65 Million on ATP 855 to date and has previously attracted Joint Venture parties who spent an additional $100 Million on the tenement for a total expenditure of over $165 million.

Recent values given for sales of 2C contingent resources would value Icon’s discovered gas at over $1 billion in the ground. However, this cannot be considered as an asset under Australian Accounting Standards, which is why Icon is planning to fully appraise the discovery leading to commercialisation.

Icon is currently in discussions with a number of parties wishing to participate in its future appraisal and development.

Icon has signed a non-binding Letter of Intent and Terms Sheet to raise over $100 million in a staged investment process. This was announced to the ASX and the market on 7 September 2022.

> A number of other parties have expressed interest in ATP 855 and are considering direct investment in Icon with a view to full commercial development of the ATP 855 gas resource.
>
> In the past Icon has demonstrated that it has the skills and financial competence to manage the acquisition and management of the funds required for large petroleum exploration projects.
>
> Icon is committed to a rapid appraisal and development of the gas resource, which has proximity to pipelines and market, and the potential to meet the current gas shortfall on the east coast of Australia.
>
> Renewal of the permit will provide Icon with the level of security that it needs to justify the large expenditure to date, and the future expenditure required to commercialise this really significant gas resource."

[18] While Icon's 2021 Annual Report, Quarterly Activity Statement, Cashflow Report and the ASX announcement dated 7 September 2022 were referred to in the Financial Capability Statement, they were not, in fact, annexed to it. Those documents were, however, publicly available. There is evidence that the documents were accessed by a Departmental employee in the context of a review of the Renewal Application and advice given to the decision-maker of that review,[3] which was one of the documents referred to in the decision-maker's reasons.[4] It is contended as one of the grounds of review that the failure to consider the information was a failure to consider a relevant consideration.

[19] The Financial Commitment Statement provided with the Renewal Application identified that the required financial commitment to carry out the authorised activities was $30.75 million. It was uncontentious at the hearing that the documents referred to in the Financial Capability Statement did not show that Icon had those funds at that time.

[20] On 17 October 2022, the delegate of the Chief Executive, who is referred to as the decision-maker, issued a letter to Icon notifying it that the decision-maker had refused to receive or process the Renewal Application due to the requirement under

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3 Affidavit of Aaron Michael Alcock filed 21 March 2023 at 256.

4 Affidavit of Aaron Michael Alcock filed 21 March 2023 at 4 (see the section sub-titled "Evidence and other material on which findings on material questions of fact were based").

s 82(1)(e) of the *P&G Act* to address the capability criteria not being met.[5] According to the letter, "[s]pecifically, the information not addressed and not included is the matters under 43(1)(b), the capability to carry out the proposed authorised activities having regard to financial resources."[6] The failure to comply with s 82(1)(e) of the *P&G Act* had the consequence of a failure to comply with s 82(1)(f), the latter provision requiring information be included that must or may be considered under ss 84 and 86 of the *P&G Act* in deciding the application. The non-compliance with s 82(1)(f) of the *P&G Act* raises no additional issues to those being considered in relation to s 82(1)(e) and therefore does not need to be addressed separately.

[21] According to Mr Raymond Swinburn James, a director of Icon, he sought to address the decision by obtaining binding commitments from investors in respect of investments to fund the proposed activities, with a view to resubmitting the application, but apparently mistakenly believed that he could lodge the additional material up until midnight on 31 October 2022. The material was not uploaded until 5:18 pm on 31 October 2022. As a result of the material being lodged after 4:30 pm, Mr James was informed by a representative of the Department that ATP 855 had expired. The validity of the Chief Executive's decision to refuse to accept the Renewal Application on 17 October 2022 therefore falls to be considered by reference to the materials submitted by Icon on 3 and 4 October 2022.

[22] In accordance with s 842(4) of the *P&G Act*, notice of the decision to refuse the Renewal Application together with the reasons for the decision (**Reasons**) were provided to Icon on 8 February 2023.

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5 Although the letter's sign off refers to "Minister's delegate", the body of the letter refers to the decision of the Chief Executive's delegate refusing to receive the Renewal Application. The reference to "Minister's delegate" appears to clearly be in error, which is supported by the reasons for the decision, and no party suggested otherwise.

6 Affidavit of Mr Raymond Swinburn James filed 21 November 2022 at 264.

[23] According to the Reasons, while the decision-maker was satisfied that a number of the required criteria had been addressed in the Renewal Application, he found that the Renewal Application did not satisfactorily address the capability criteria in s 82(1)(e) of the *P&G Act* and further that he was not satisfied that the Renewal Application substantially complied with the requirements imposed by s 82 of the *P&G Act*. As to that, the decision-maker's Reasons stated:

> "*Requirements for making an application to renew an ATP*
>
> …
>
> 31. With regard to these matters, I was also satisfied that the Purported Application:
>
> - stated details of, and reasons for, each noncompliance (s 82(1)(c));
> - stated whether or not the applicant has complied with chapter 5, part 7, for reports required to be lodged in relation to the authority (s 82(1)(g);
> - was accompanied by the prescribed fee (s 82(1)(h)); and
> - included a proposed LWP for the renewed authority (s 82(1)(d)).
>
> 32. However, **for the reasons set out immediately below, I was not satisfied that the Purported Application satisfactorily addressed the capability criteria** (s 82(1)(e)) or included information about the matters required by ss 84 and 86 (s 82(1)(f)).
>
> *Capability Criteria (s.82(1)(e) and s.82(1)(f))*
>
> 33. Within the Financial Commitments document accompanying the Purported Application, Icon Energy provided details that the estimated financial commitments associated with the proposed term for the renewal of ATP 855 was proposed to be $34.75 million.
>
> 34. On page 2 of the Financial Capability Statement included in the Purported Application, Icon Energy noted that it is listed on the Australian Stock Exchange (ASX) and that through the ASX, Icon's Annual Report 2021 and a Quarterly Activities Statement and Cash Flow Report released on 29 July 2022 are available. The referenced ASX documents were not provided as part of the Purported Application by Icon Energy.

35. Icon Energy stated on page 2 of the Financial Capability Statement that *"Icon has expended over $65 million on ATP 855 to date and has previously attracted Joint Venture parties who spent an additional $100 Million the tenement."*

36. Icon Energy further stated on Page 2 of the Financial Capability Statement that *"In the past Icon has demonstrated that it has the skills and financial competence to manage the acquisition and management of the funds required for large petroleum exploration projects."*

37. On Page 11 of the proposed LWP accompanying the application, Icon Energy nominated the failure to attract funding in mid-2018 from a potential Asian gas customer as amongst the reasons for non-compliance with the previous work program for ATP 855.

38. The provided statements regarding a history of purported capability do not provide the Minister with information which may be assessed **on the funds readily available to be allocated to proposed commitments for ATP 855,** which statedly required an estimated $34.75 million**.**

39. **Insufficient details** were provided to establish the relevance or recency of historical fund-raising efforts cited by Icon Energy.

40. The Purported Application **failed to establish** the portion of commitments that were currently funded and what portion was intended to rely on future funding.

41. The Purported Application noted on page 2 of the Financial Capability Statement that Icon Energy has access to both domestic and international capital markets from which funds may be raised for exploration and appraisal projects.

42. Icon Energy **claimed** on page 3 of the Financial Capability Statement that they were in discussions with a number of parties wishing to participate in future appraisal and development and that a number of other parties had expressed interest in ATP 855 and are considering direct investment in Icon, **however no specific details** were provided such as to the number of parties or identity of any party.

43. On page 3 of the Financial Capability Statement, Icon Energy **purported** to have signed a non-binding Letter of Intent and Terms Sheet to raise over $100

million in a staged investment process, announced to the ASX on 7 September 2022. No copy of the ASX announcement was provided.

44. A copy of the non-binding Letter of Intent or the Terms Sheet was not included within the Purported Application.

45. No further details of the contents of the non-binding Letter of Intent or Terms Sheet were provided in the application material, including the identity of the countersigning entity.

46. **No evidence was provided to demonstrate** any third parties' financial capability to contribute any portion of the estimated $34.75 million committed to within the proposed work program accompanying the Purported Application.

47. **No evidence was provided to establish the likelihood** of any third party contributing financial resources to the proposed work program accompanying the Purported Application.

48. Accordingly, I found that the Purported Application failed to comply with the requirements imposed by ss 82(1)(e) and (f)."

(emphasis in bold added, italics per original)

[24] The decision-maker then stated the reasons for his decision:

"**Reasons for decision**

56. Having regard to the material and findings referred to above, I concluded that I was required to refuse to receive or process the Purported Application, in accordance with section 842(2) of the P&G Act.

57. In concluding that I must refuse to receive or process the Purported Application I considered whether notwithstanding the Purported Application's noncompliance, it otherwise **substantially** complied with the requirements.

58. As set out in paragraphs 33-48, I was not satisfied that the Purported Application demonstrated that Icon Energy met the capability requirements for the renewal of the ATP. In particular, I formed the opinion that there was **insufficient information for the Minister** to be satisfied that Icon Energy has the financial resources necessary to carry out the authorised activities for the authority.

59. As noted in paragraph 33, Icon Energy proposed to commit to undertake $34.75 million of activities during the net period for former ATP 855. In light of the matters set out in paragraphs 33-48, **I concluded that the Purported Application failed to provide substantial evidence or demonstrably reliable and relevant statements for the Minister's consideration.**

60. The failure to establish any of, Icon Energy's readily available funds, the portion of proposed activities reliant on future and prospective funding, or the capability of any third party which Icon Energy may be reliant on for funding **are indicative of the absence of information required to allow the Minister to form any opinion** about Icon Energy's capability to undertake the $34.75 million of proposed commitments.

61. Having formed this view regarding Icon Energy's Purported Application, and with reference to my findings on the material questions of fact in relation to the requirements under the P&G Act (paragraphs 18-55), I have concluded that the Purported Application was not made in compliance with the requirements of the P&G Act. Specifically, I have concluded that the Purported Application does not address the capability criteria, pursuant to section 82(1)(e) of the P&G Act and does not include the information about the matters that must or may be considered under sections 84 and 86 in deciding the application, pursuant to section 82(1)(f) of the P&G Act.

62. As detailed within my finding in paragraph 12, the capability criteria are defined with reference to the extent to which the Minister is of an opinion that the applicant is capable of carrying out authorised activities. The explanatory notes for the introduction of the P&G Act clarify that the capability criteria are to be considered so as the ensure that the ATP will only be granted to a holder that has the resources and ability to complete the proposed work program in full and on time. The matters to be addressed and information to be included within an application for the renewal of an ATP are ultimately for the Minister's consideration in deciding whether to grant or refuse the renewal of an ATP.

63. Having regard to the abovementioned matters, and with reference to my finding that **there is insufficient information within the Purported**

> **Application to allow the Minister to form any opinion about Icon Energy's capability to undertake the $34.75 million of proposed commitments**, I am not satisfied that the Purported Application substantially complies with the requirements of the P&G Act.
>
> 64. Given above, I must refuse to receive or process the Purported Application as required by section 842(2) of the P&G Act."

[25] In analysing the decision-maker's Reasons, I am conscious that the Court is not to treat the document as if drafted with the precision of a lawyer.

Contentions as to Errors of Law

[26] Icon contends that the decision-maker made three errors of law, namely that:

(a) the decision-maker proceeded on an incorrect interpretation of "address" in s 82(1)(e) of the *P&G Act* in relation to the requirement to "address the capability criteria". According to Icon, the ordinary meaning of "address" should be adopted in the context of s 82(1)(e), namely to "speak directly to"[7] or "to give attention to or deal with a matter or problem"[8]. Icon submits that s 82(1)(e) is a gateway provision and that there is nothing in ss 82(1)(e) or 842(1) of the *P&G Act* which calls for the decision-maker to undertake an evaluation of the quality of the information provided by the applicant as the decision-maker did in this case. The decision-maker was required to determine whether or not the Renewal Application was made in accordance requirements of the *P&G Act* by examining the Renewal Application to see whether it included information "directed to" or "responding to" each of the requirements detailed in the *P&G Act*. Icon submits that it is the Minister who is to evaluate the quality of the information provided by an applicant under the *P&G Act*, not the Chief Executive or the Chief Executive's delegate;

(b) the decision-maker further erred in assessing whether the Renewal Application addressed Icon's financial capability on the basis that capability as to financial resources required Icon to demonstrate that it had the funds required for the authority activities "readily available to be allocated to

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7 *The New Shorter Oxford English Dictionary*.
8 *Cambridge Dictionary* (online at 7 June 2023) 'address' (def Cl).

proposed commitments for ATP 855", which were estimated to be $34.75 million. Icon contends that under the *P&G Act*, financial capability of carrying out the authorised activities for an authority could be demonstrated by several matters, including past performance and the quality of the resource concerned, and was not limited to demonstrating that Icon had funds readily available. The decision-maker's approach is said to put an impermissible gloss on the words employed in the *P&G Act*; and

(c) the decision-maker asked himself the wrong question when considering the Renewal Application under s 842 of the *P&G Act*, and whether s 82(1)(e) was complied with in considering whether there was sufficient or substantial information such that the Minister could be satisfied that Icon had the financial resources available to be capable of carrying out authorised activities for the authority. Icon contends that the fact that the decision-maker undertook an exercise is demonstrated by the language used in the Reasons, such as "insufficient", "satisfactorily addressed", "no specific details", "insufficient information for the Minister to be satisfied", "no evidence was provided to establish the likelihood", and "no substantial evidence or demonstrably reliable and relevant statements". According to Icon, s 842 of the *P&G Act* did not require the decision-maker to form opinions about the quality of the information provided in determining whether the Renewal Application met the requirements under the *P&G Act*, which was the role of the Minister under the *P&G Act*.

[27] There is no dispute between the parties that the decision-maker carried out an evaluation process of the information concerned. The Chief Executive originally construed Icon's contention to be that no assessment or evaluation was involved in a decision under s 842 of the *P&G Act*. Icon clarified in its Reply Submissions that it accepted both decisions under s 842(1)–(2) and under s 842(3) of the *P&G Act* involve an assessment or evaluation of the application but not one which assesses or evaluates the quality of the information provided. The real issue is whether the decision-maker carried out an assessment or evaluation of the Renewal Application in accordance with the process required by the *P&G Act*.

[28] The Chief Executive contends that the errors of law allegations are not made out when the *P&G Act* is given the construction that the Chief Executive submits the Court should accept and that the decision-maker neither misconstrued the law, nor did the decision-maker misconstrue the law in applying it. According to the Chief Executive, s 842 of the *P&G Act* provides for two evaluative tasks. The first task involves the relevant person considering whether the application is properly made. According to the Chief Executive, that involves the relevant person evaluating the form and substance of the application, because the requirements of the *P&G Act* prescribe matters of both form and substance, and forming an opinion about whether the application was made under the requirements under the *P&G Act.* If the application is a purported application, it must be refused or rejected subject to the discretion being enlivened as a result of the second task.

[29] As to the second task, the relevant person has a discretion to determine if the application "substantially complies" with the requirements. That again can only be done if the relevant person evaluates the form and substance of the application. The exercise of the power requires meaningful engagement to consider whether, notwithstanding the extent to which the application does not comply with the requirements, the relevant person is satisfied that the application substantially complies with the requirements. In such a case, the relevant person has a discretion and "may" decide to allow the application to proceed to be decided by the Minister as if it did comply with the requirements. The Chief Executive contends that the exercise under s 842(1) of the *P&G Act* is not readily divisible from the exercise under s 842(3) and informs the task of the relevant person under s 842(1) and that entails the formation of an opinion.

[30] The Chief Executive contends that the fact that the legislative intention is that the relevant person's task under s 842 must include active engagement with and evaluation of both the form and the substance of the application is fortified by the later provision contained in s 843 of the *P&G Act* insofar as that section provides that the relevant person can require the applicant to correct or complete an application, provide further information, or provide an independent report or verification of information provided. According to the Chief Executive, the relevant person could only properly issue those requests if an evaluation of the substance of the application had been carried out under s 842 and further would inform a

decision-maker under s 842(3) in determining whether there was substantial compliance with the requirements.

[31] The Chief Executive submits that the effect of s 842 of the *P&G Act* is to:[9]

(a) encourage applicants to ensure that their applications are properly made in accordance with the requirements of the *P&G Act* by making the prima facie position that non-compliant applications will be refused;

(b) ensure that the Minister's time is not wasted in deciding applications that do not comply with the requirements of the *P&G Act* (potentially slowing down the way all applications to be decided by the Minister under the *P&G Act* would be determined); and

(c) avoiding needless "red tape" by allowing otherwise substantially compliant applications to be received and decided by the Minister in appropriate circumstances.

[32] The Chief Executive contends that the above approach outlined in relation to s 842 accords with the purpose of the *P&G Act* in creating an "effective and efficient regulatory system for the carrying out of petroleum activities".[10] According to the Chief Executive, its construction of s 842 aligns with the purpose of the *P&G Act*, more effectively discharges the "gateway provision" role, and does not undermine the Minister's ultimate discretion in determining whether or not to approve an application.

[33] Icon contends that s 842(1)–(2) are not premised on the formation of an opinion but rather that those sections turn on whether as a matter of fact the requirements under the *P&G Act* are met. In contrast to Icon, therefore, the Chief Executive contends that the principles applicable to the exercise under s 842(1)–(2) or under s 842(3) of the *P&G Act* are those conditioned upon the decision-maker having a particular belief, namely whether the requirements of the *P&G Act* have been satisfied. The principles insofar as they apply to the statutory powers conditioned on a decision-maker having a particular belief are set out by the Chief Executive at paragraph 37

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9 Respondent's Outline of Argument at [30].
10 Section 3 of the *P&G Act.*

of its Outline of Argument and are accepted by Icon as uncontentious if they were applicable.

[34] Icon contends that the relevant jurisdictional fact is non-compliance with the requirements of the *P&G Act*. In such a case, it is for this Court to determine the question of fact on the merits having regard to the information before the decision-maker as well as any additional evidence before the Court,[11] which in the present case has been presented in the affidavits of Mr James. In a review, the Court does not substitute its opinion for the opinion of the person in question but asks whether the repository of power could have formed the opinion reasonably[12] having regard to the existence of facts in the material relied upon.

[35] According to the Chief Executive, the very nature of the requirements informs the task the relevant person must undertake under s 842 of the *P&G Act*, which involves matters of substance such as s 82(1)(e) and requires forming an opinion about matters which are qualitative.

[36] The Chief Executive further contends that "address" in s 82(1)(e) of the *P&G Act* requires a level of intellectual engagement. It contends that the meaning of "address" can be ascertained more from its natural meaning[13] in the context of the *P&G Act* rather than its ordinary meaning. According to the Chief Executive, that suggests that the meaning which should be preferred and which should be adopted is the definition of "address" as a verb, namely "to take on as a topic for discussion or inquiry, or as a problem to be solved; to deal with, tackle, or confront"[14].

[37] According to the Chief Executive, the context in which "address" in s 82(1) of the *P&G Act* appears supports that construction. Section 82 is mandatory in prescribing the form and substance of a renewal application. The Chief Executive contends that the intention of s 82 was to explain to a prospective applicant, and the person who has to assess whether the application was properly made, the form which the application must take and the substance it must include. The Chief Executive

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11 *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135 at 151 and 155.

12 *Foley v Padley* (1984) 154 CLR 349 at 370; *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135 at 150.

13 Which refers to a word's grammatical meaning: see Herzfeld and Prince, *Interpretation* (Thomson Reuters, 2nd ed, 2020) at [2.10].

14 *Oxford English Dictionary* (online at 12 October 2023) 'address, v.' (def IV.17.c.).

contends that its proposed definition of "address" is consistent with its usage elsewhere in the *P&G Act* and that the term should be construed consistently throughout the *P&G Act* in accordance with the presumption of construction that a word has the same meaning throughout an Act.[15]

[38] According to the Chief Executive, what the applicant needed to do (and what the decision-maker was required to evaluate whether Icon had done) was to take on the "compliance criteria":

(a) as a topic for discussion or inquiry; or

(b) as a problem to be solved, to be dealt with, tackled or confronted.

[39] The Chief Executive contends that the Reasons show that the decision-maker, in deciding whether the requirements of the *P&G Act* in s 82(1)(e) were met:[16]

(a) properly identified the power under which the decision was made;

(b) identified what s 82(1)(e) required;

(c) found a number of facts that were open on the evidence before him;

(d) considered whether, despite those findings, the Renewal Application otherwise substantially complied with the requirements;

(e) concluded that the Renewal Application failed to "provide substantial evidence or demonstrably reliable and relevant statements for the Minister's consideration";

(f) concluded that he was not satisfied that the Renewal Application substantially complied with the requirements of the *P&G Act*; and

(g) concluded that he was bound to refuse to receive or process the Renewal Application, as s 842(2) required.

[40] The Chief Executive contends that given the breadth of the decision-maker's task under s 842, it was within the decision-maker's powers to engage with and evaluate the evidence provided in the Renewal Application, determine by reference to that evidence whether the Renewal Application met the requirements, and to make the

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15 *Registrar of Titles (WA) v Franzon* (1975) 132 CLR 611 at 618.
16 Respondent's Outline of Argument at [60].

findings he did. In doing so, the Chief Executive contends that the decision-maker did not misconstrue the meaning of "address" nor ask himself the wrong question in determining whether the requirements of the *P&G Act* were met or substantially complied with.

[41] As to the contention that the decision-maker misconstrued "capability" as requiring all funds required for the authority to be readily available, the Chief Executive submits that the *P&G Act* does not circumscribe the matters which the decision-maker had to be satisfied of. The finding that Icon did not have funds readily available was part of the chain of reasoning towards the conclusion that the Renewal Application did not meet the requirements and was not determinative when the Reasons are read as a whole.

[42] The Chief Executive further contends that in doing so, the decision-maker acted within the terms of the *P&G Act*.

Consideration – Did the Decision-maker Misconstrue the *P&G Act*?

[43] To determine whether the decision-maker has erred as contended by Icon, it is necessary to construe the nature of the decision-making under s 842 of the *P&G Act* and the meaning of the words used in s 82(1)(e) of the *P&G Act* having regard to s 43(1)(b).

[44] The rules of statutory construction are well established and were conveniently summarised by Kiefel CJ and Keane J in *R v A2* (***A2***):[17]

> "[32] The method to be applied in construing a statute to ascertain the intended meaning of the words used is well settled. It commences with a consideration of the words of the provision itself, but it does not end there. A literal approach to construction, which requires the courts to obey the ordinary meaning or usage of the words of a provision, even if the result is improbable, has long been eschewed by this Court. It is now accepted that even words having an apparently clear ordinary or grammatical meaning may be ascribed a different legal meaning after the process of construction is complete. This is because consideration of the context for the provision may point to factors that tend against the ordinary usage of the words of the provision.

[17] (2019) 269 CLR 507 at [32]–[34] (***A2***).

> [33] Consideration of the context for the provision is undertaken at the first stage of the process of construction. Context is to be understood in its widest sense. It includes surrounding statutory provisions, what may be drawn from other aspects of the statute and the statute as a whole. It extends to the mischief which it may be seen that the statute is intended to remedy. "Mischief" is an old expression. It may be understood to refer to a state of affairs which to date the law has not addressed. It is in that sense a defect in the law which is now sought to be remedied. The mischief may point most clearly to what it is that the statute seeks to achieve.
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> [34] This is not to suggest that a very general purpose of a statute will necessarily provide much context for a particular provision or that the words of the provision should be lost sight of in the process of construction. These considerations were emphasised in the decisions of this Court upon which the Court of Criminal Appeal placed some weight."
>
> (footnotes omitted)

[45] Under s 14A of the *Acts Interpretation Act 1954* (Qld) (***AIA***), an interpretation of a provision of an Act that will best achieve the Act's purpose is to be preferred. To that end, consideration may be given to extrinsic materials[18] for the purposes outlined in s 14B(1) of the *AIA*.

[46] Section 842(1) of the *P&G Act* provides for an initial review of an application to which it applies to determine whether the application is made under the requirements of the *P&G Act* for the application. It is not limited to an application for renewal of an ATP such as in the present case.

[47] In order to determine whether an application is "a purported application" under s 842 of the *P&G Act*, the relevant person must determine that the application is "not made under the requirements under this Act for making the application." The relevant person is defined, relevant to this renewal application, to be the Chief Executive.

Did s 842 require the requirements to be complied with as a matter of fact or opinion?

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[18] See s 14B(2)–(3) of the *Acts Interpretation Act 1954* (Qld) (***AIA***).

[48] There is no issue that as an initial step the decision-maker (as the delegate of the Chief Executive) has to determine under s 842(1) whether the application is made under the requirements under the *P&G Act*. Does s 842(1)–(2), on its correct construction, provide for the determination of whether the requirements of the *P&G Act* are met to be one of fact, or one conditioned upon the decision-maker forming a belief or opinion as to whether or not the requirements under the *P&G Act* were met?

[49] Whether the legislature has made the exercise of a statutory power contingent upon the existence of a state of facts or the decision-maker's opinion or satisfaction about certain matters is a question of statutory construction.[19]

[50] According to French CJ in *Plaintiff M70/2011 v Minister for Immigration and Citizenship*:[20]

> "The term "jurisdictional fact" applied to the exercise of a statutory power is often used to designate a factual criterion, satisfaction of which is necessary to enliven the power of a decision-maker to exercise a discretion. The criterion may be "a complex of elements". When a criterion conditioning the exercise of statutory power involves assessment and value judgments on the part of the decision-maker, it is difficult to characterise the criterion as a jurisdictional fact, the existence or non-existence of which may be reviewed by a court. The decision-maker's assessment or evaluation may be an element of the criterion or it may be the criterion itself. Where a power is expressly conditioned upon the formation of a state of mind by the decision-maker, be it an opinion, belief, state of satisfaction or suspicion, the existence of the state of mind itself will constitute a jurisdictional fact. If by necessary implication the power is conditioned upon the formation of an opinion or belief on the part of the decision-maker then the existence of that opinion or belief can also be viewed as a jurisdictional fact …"
>
> (footnotes omitted)

[51] The language used in s 842(1)–(2) of the *P&G Act* does not refer to the formation of an opinion by the relevant person. The reference to "purported application" does not imply such a requirement, given the section identifies such an application to be one "not made under the requirements under this Act for making the application". The

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19 *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) 244 CLR 144 at [109].

20 (2011) 244 CLR 144 at [57].

language used is in distinct contrast to s 842(3) of the *P&G Act*, which does require the formation of an opinion and provides the decision-maker with a discretion to allow the application to proceed. That power is to be exercised where the decision-maker has determined that an application is non-compliant. The stark contrast in the language used supports the exercise to be carried out under s 842(1) of the *P&G Act* being an exercise to determine whether, as a matter of fact, the application complies with the requirements of the *P&G Act*.

[52] The fact that some of the requirements of the *P&G Act*, such as those contained in s 82, require the applicant to provide detailed information of substance to respond to the requirements does not support a different construction. The task of the decision-maker under s 842(1) does not require that the decision-maker form an opinion by engaging with the substance of the criteria to be able to assess whether the requirements are met in order to carry out the task. A review of the information provided in the application will inform the decision-maker as to whether or not the application has responded to each of the requirements. The determination of whether the application has been made under the requirements of the *P&G Act*, even if the requirements are matters of substance, does not imply an assessment of the quality of the information provided. Such an implication is not open, particularly when contrasted to the specific words used in s 842(3) of the *P&G Act*. No criterion is provided in s 842(1)–(2) as to what level of satisfaction would need to be met by the decision-maker to form an opinion that the requirements had been met. Had the legislature intended that the decision-maker carry out an evaluation of the quality of the information provided, it would have used language to reflect that.

[53] While the Chief Executive submits that the exercise under s 842(3) of the *P&G Act* supports the fact that the process to be carried out as part of the exercise under s 842(1) is an evaluative process engaging with the substance of the application, as the Chief Executive recognises, there are two tasks potentially to be carried out under s 842 of the *P&G Act*. The language used in relation to s 842(3) is in direct contrast to the absence of such language in s 842(1)–(2). The very nature of substantial compliance is one that is necessarily opinion based. If non-compliance with the requirements is found, s 842(3) provides for the decision-maker to assess the level of deficiency in the response, and the critical nature or otherwise of the requirement not responded to, in order to determine whether the application

substantially complies with the requirements and should be allowed to proceed as if it did comply with the requirements.

[54] Further, while the Chief Executive contends that the assessment of whether the application substantially complies with the requirements of the *P&G Act* would have to be carried out at the same time, given that a purported application otherwise must be refused under s 842(2), the structure of s 842 does not lead to that conclusion. The consideration as to whether the application substantially complies with the *P&G Act* only arises if requirements under the *P&G Act* are not met, otherwise the application will proceed for determination. That is consistent with the legislative intention that the primary task of the decision-maker under s 842(1) is to determine as a matter of fact whether or not the requirements of the *P&G Act* are met, supported by the language used in s 842(1) which implicitly requires that the relevant person determine whether or not the requirements are met but does not prescribe any threshold that must be met in terms of the information provided.

[55] While s 842(2) does provide for a purported application to be refused, that does not imply that the process under s 842(1) and (3) is an evaluative process to be carried out at the same time. The effect of a favourable decision under s 842(3) would be that the application would "proceed and be decided as if it did comply with the requirements" and therefore not be treated as a purported application. The tasks called for to assess whether an application is a purported application or not under s 842(1), and if not whether it substantially complies under s 842(3), are separate tasks. On its proper construction, s 842(2) would be subject to the decision-maker first considering whether the application would be permitted to proceed under s 842(3) in the event that the application was found not to comply with the requirements of the *P&G Act*, rather than the decision-maker being compelled to refuse the application as soon as it was determined that the application did not meet the requirements of the *P&G Act*.

[56] That is similarly supported by having regard to the context of the later provisions which follow s 842 of the *P&G Act*.

[57] The inclusion by the legislature of s 843, which provides for further information to be completed or provided after the acceptance of an application, supports the fact that the exercise under s 842(1) is a preliminary exercise to ascertain whether the

application as a matter of fact complies with the requirements of the *P&G Act* by checking whether it contains information directed to each requirement, rather than being a determination of whether the quality of the information could satisfy the requirements.

[58] The exercise of the power in s 843 is not constrained by or reliant upon the exercise carried out under s 842 of the *P&G Act*.[21] Once an application is accepted, s 843 permits the Chief Executive to carry out an evaluative exercise of the quality of the information provided in the application to determine whether further requests should be made for information to allow the Minister to decide the application or to obtain independent information or verify information in the application or information requested. If there is a refusal to comply with that request, the application may be refused by the Minister under s 843A of the *P&G Act*.[22]

[59] If an application is found to be substantially compliant under s 842(3) and allowed to proceed, the decision-maker can then proceed to request that the applicant complete or correct an application or provide or verify further information. While the power in s 843 may inform the decision-maker in reaching a view as to whether the requirements of the *P&G Act* have been substantially complied with and the exercise of the discretion to permit the application to proceed, that does imply that the evaluative process in s 842 is carried out to enable requests to be made under 843. That is made clear by the fact that the *P&G Act* provides for the power to only be exercised if there is an application. That is consistent with the purpose of achieving an efficient and effective regulatory system by ensuring time is not wasted assessing whether further action or information should be sought from the applicant when the application is not a complete application.

[60] The Chief Executive's submission that the exercise of the decision-maker's task under s 842 must include active engagement with and evaluation of both the form and substance of the application, because otherwise there is no practical way the decision-maker could properly issue any of the requests under s 843 of the *P&G Act*, must be rejected.

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[21] Albeit that the relevant person is the same person as nominated to carry out the task under s 842 of the *P&G Act*.

[22] Sections 843A–843D of the *P&G Act* were introduced as part of a suite of amendments in 2012.

[61] The legislative history does give some support to Icon's construction of s 842.

[62] In 2012, through the *Mines Legislation (Streamlining) Amendment Act 2012* (Qld) (***Streamlining Act***), amendments to the *P&G Act* separated the decision-making roles of the Minister in relation to applications and provided for the Chief Executive to exercise part of the decision-making role previously exercised by the Minister.[23]

[63] Section 842 in its form prior to the amendment provided:

> **84 Substantial compliance with application requirements may be accepted**
>
> (1) If—
>
> (a) a person has made, or purported to make, an application under this Act; and
>
> (b) the requirements under this Act for making the application have not been complied with; and
>
> (c) the decision-maker is satisfied the application substantially complies with the requirements;
>
> the person who must decide the application may decide to allow it to proceed and be decided as if it did comply with the requirements.
>
> (2) Subsection (1) does not apply to an application the chief executive has refused to receive under section 118(2).

[64] As is apparent, under the *P&G Act* prior to the 2012 amendments, the Minister was the relevant person to decide the application and to determine whether the application complied with or substantially complied with the requirements of the *P&G Act*. After the 2012 amendment, it was the "relevant person" who was to determine compliance with the requirements of the *P&G Act*. As is evident from s 842 as it now stands, the Chief Executive is the relevant person.[24] It is notable that prior to the 2012 amendments there was a distinction in s 842 between the role of the Minister deciding whether the application complied with the requirements as opposed to the Minister's role "as the person who must decide the application". Nothing in the 2012 amendments suggests that demarcation in decision-making changed, rather it was an allocation of the pre-existing roles to different people.

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[23] *Mines Legislation (Streamlining) Amendment Act 2012* (Qld).
[24] Relevant to this application.

[65] The 2012 amendments were introduced across several Acts as part of a Streamlining Approvals Project which had "the aim of reducing the time taken to process resources permit applications without compromising the rigour of the assessment process".[25]

[66] The Explanatory Notes to the Bill that became the *Streamlining Act* state under the heading "Streamlining":[26]

> "The Bill also provides a consistent process for applications that do not fully comply, to be received and be allowed to proceed, if the application substantially complies with the Act. This assessment is exercised at the preliminary stage on whether the application is properly made; no rights or interests are being removed as the decider would not be able to assess the application. Therefore a merits based review is not appropriate and applicants are still entitled to judicial review if they are dissatisfied. The new provisions are sufficiently defined as they state that the requirements of the Act must be considered, and these criteria are adequately addressed in relevant sections for making applications, under each Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in circumstances where the application of discretion is appropriate."

[67] The Explanatory Notes in relation to the proposed s 842 state in part:[27]

> "There is no appeal process for this decision and there may be FLP concerns that there is not an appropriate review of the administrative power available. This assessment is exercised at the preliminary stage of the application on whether the application is properly made; therefore, no rights or interests are being removed as the decider would not be able to assess the application. Applicants are still entitled to judicial review of the department's decision if they are dissatisfied.
>
> There may also be concerns that this administrative power is not sufficiently defined in terms of the criteria the Minister is considering when deciding to refuse to receive the application or whether it is substantially compliant. This section identifies that the requirements of the Act must be considered, and in terms of making an application, these criteria are adequately addressed in those relevant sections of the Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in

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25 Explanatory Notes, Mines Legislation (Streamlining) Amendment Bill 2012 (Qld) at 1.
26 Explanatory Notes, Mines Legislation (Streamlining) Amendment Bill 2012 (Qld) at 10.
27 Explanatory Notes, Mines Legislation (Streamlining) Amendment Bill 2012 (Qld) at 145.

> circumstances where the application of discretion is appropriate."

[68] There is an obvious error in the Explanatory Notes insofar as they refer to the Minister refusing the application under the proposed amended s 842, not the "relevant person".

[69] Both Icon and the Chief Executive contend that the Explanatory Notes to the 2012 amendments provide support for the construction of s 842 of the *P&G Act* that they propose.

[70] The reference to an assessment "at the preliminary stage of the application on whether the application is properly made" where "no rights or interests are being removed as the decider would not be able to assess the application", and the absence of an appeal process as opposed to judicial review of the decision, do lend some support to the fact that the assessment under s 842 is a preliminary exercise to determine whether the application contains information which addresses each requirement to enable the decider of the application to assess the application, without which a decider would not be able to assess the application. It does not suggest that it is an evaluation of the substance of the application which could remove a party's "rights and interests".

[71] The Chief Executive sought to emphasise the reference to "assessment" as supporting the fact that the Chief Executive is carrying out an evaluative exercise of the substance of the information provided in an application to form an opinion as to whether the requirements of *P&G Act* are met. "Assessment" is the action of assessing something.[28] There is no question that in determining whether an application complies with the requirements of the *P&G Act*, the Chief Executive is carrying out a form of assessment to ascertain that the information provided does actually respond to the criteria in question. But that does not imply that it is an assessment of the quality of what is contained in the application as opposed to determining whether the application contains information directed to each requirement for completeness because otherwise because "the decider would not be able to assess the application".

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[28] *Oxford Dictionary of English* (online at 12 October 2023) 'assessment'.

[72] The nature of the task under s 842 of the *P&G Act* is further supported by the fact that the Minister remained the "decider" of the application. The Minister's role includes determining whether capability criteria for a renewal application are satisfied, demonstrating that part of the Minister's role involves engaging with the substance of the application.

[73] The initial exercise under s 842(1)–(2) is one which calls for the decision-maker to decide as a matter of fact whether the application complies with the requirements as a matter of fact and an evaluation of the information in the application to see whether it responds to the requirements. It is not an evaluative exercise assessing the quality of the information provided in the application by which the decision-maker is required to form an opinion as to whether the application complies with the requirements. That is supported by:

(a) the language used in s 841(1) which does not provide for the formation of an opinion;

(b) the absence in s 842(1)–(2) of any criteria or threshold test to be applied in determining whether the application complies with the requirements of the *P&G Act*;

(c) limited review being provided by way of judicial review if an application is refused under s 842(2), which according to the Explanatory Notes was because "no rights or interests are being removed as the assessor would not be able to assess the application";

(d) the contrast in language with s 842(3), which provides for the decision-maker to form an opinion and exercise their discretion as to whether the application should proceed;

(e) the fact that s 843 does provide for requests to be made of an applicant in response to the quality of information provided in an application but applies after an application is accepted as an application;

(f) the separate role of the Minister under the *P&G Act* as the person required to decide whether the application should be granted or not (and make requests of the applicant under s 843B to assist in the determination of the application) and the legislative history as to how the demarcation of roles occurred;

(g) at least in terms of the capability criteria, the fact that the Minister must be satisfied of those criteria before granting a renewal, supporting the fact that it is the Minister who is to assess the substance and quality of the information and not the decision-maker under s 842; and

(h) the power given to the Chief Executive under s 843 of the *P&G Act* after an application is accepted which at that point in time enables an assessment of the quality of an application to be carried out and requests for further action, information or verification to be made.

[74] In my view, Icon's construction accords with the purpose of s 842 that will best achieve the objective of the *P&G Act* to create an effective and efficient regulatory system for the carrying out of petroleum activities. It does so by:

(a) providing for the Chief Executive to be able to check that the application has complied with the requirements it has to meet by ensuring that information has been provided which is directed to each requirement and that the application is in the required form;

(b) providing for the Chief Executive to exercise his or her discretion to allow the application to proceed if it is apparent on the face of the application that it has substantially complied with the requirements of the *P&G Act* for the application;

(c) permitting the relevant person to refuse to receive or process the application if the application does not meet the requirements of the *P&G Act* and the Chief Executive does not conclude that it substantially complies with the *P&G Act*;

(d) limiting any challenge to the decision to reject the application to judicial review as opposed to an appeal process;

(e) providing a power for the Chief Executive to request that an application be corrected or information provided to complete it and to provide further information as to some requirements under s 843 of the *P&G Act* to assist the Minister when the Minister is carrying out the decision-making process under ss 84 and 86 of the of the *P&G Act*. That power is not temporally constrained and could be exercised after the determination that the application substantially complies with the requirements of the *P&G Act* to address any

deficiency, or after a subsequent evaluation of the application after it has been accepted prior to it being considered by the Minister; and

(f) ensuring the Minister is not burdened with incomplete applications which do not comply or substantially comply with the *P&G Act* or having to consider whether the applications comply with the *P&G Act* and maintaining the legislature's intention that the determination of whether the application should be granted lies with the Minister, consistent with the recognition in s 3(1) of the *P&G Act* that the petroleum and gas reserves are a State asset to be managed inter alia for the benefit of all Queenslanders.

"Address the capability criteria"

[75] The requirements for an application to renew an ATP are set out in ss 81 and 82 of the *P&G Act*. The requirements in s 82 are stated in mandatory terms by the use of "must". As set out above, the Chief Executive in this case determined that the Renewal Application was not made in accordance with the requirement in s 82(1)(e) of the *P&G Act* in that it did not "address the capability criteria".

[76] The "capability criteria" are relevantly defined to be the matters in s 43(1)(b) of the *P&G Act*.[29] It is uncontentious between the parties that the "matters mentioned in subsection 1(b)", which are said to be the capability criteria,[30] do not refer to the Minister's opinion but to the tenderer's capability to carry out authorised activities for the authority, having regard to the tenderer's:

(a) financial and technical resources; and

(b) ability to manage petroleum exploration and production.

[77] As set out above, Icon contends that "address" means "to respond or direct a response to". In contrast, the Chief Executive contends that "address" means "to take on as a topic for discussion or inquiry or as a problem to be solved; to deal with, tackle or confront."

[78] Consistent with the approach outlined by Kiefel CJ and Keane J in *A2*, in order to determine the intended meaning of a provision, one starts with the words of the

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[29] Schedule 2 of the *P&G Act*.
[30] Section 43(2) of the *P&G Act*

provision itself and then considers the context in which they appear in the Act and the broader context in which the provision was made to determine whether the provision accords with the ordinary and natural meaning.[31]

[79] It is helpful in relation to the ordinary meaning to have regard to the dictionary meanings attributed to "address".[32] As the Chief Executive submits, however, while the Court may have regard to dictionary definitions in attempting to construe the meaning of words in statutes, it is not bound by them.[33]

[80] The Oxford Dictionary of English defines "address" as a verb to relevantly mean:[34]

> "2. speak to (a person or an assembly): *she addressed the open-air meeting*.
>
> - (address someone as) name someone (in the specified way) when talking to them: *she addressed my father as 'Mr Stevens'*.
>
> - (address something to) say or write remarks or a protest to: *address your complaints to the Trading Standards Board*.
>
> 3. think about and begin to deal with (an issue or problem): *a fundamental problem has still to be addressed*."

[81] The Australian Oxford Dictionary defines "address" as a transitive verb to relevantly mean:[35]

> "2. direct in speech or writing (remarks, a protest, etc.).
>
> 3. speak or write to, especially formally: *addressed the audience | asked me how to address a duke*.
>
> 4. direct one's attention to."

[82] The Macquarie Dictionary defines "address" as a verb to relevantly mean:[36]

> "12. to direct to the ear or attention: to address a warning to someone.

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[31] Described by Kiefel CJ and Keane J in *A2* as the ordinary meaning and usage of the words used.

[32] It is permissible to have regard to extrinsic materials as part of the context and purpose of the Act at common law. It is also permissible under s 14B of the *AIA* where the ordinary meaning is ambiguous or to confirm the ordinary meaning. Both the common law and s 14B of the *AIA* are satisfied in this case.

[33] *Thiess v Collector of Customs* (2014) 250 CLR 664 at [23]; *Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd* (1991) 25 NSWLR 541 at 560.

[34] *Oxford Dictionary of English* (online at 6 October 2023) 'address' (defs 2–3).

[35] *Australian Oxford Dictionary* (online at 6 October 2023) 'address' (defs 2–4).

[36] *Macquarie Dictionary* (online at 6 October 2023) 'address' (defs 12–13).

> 13. to deal with (a problem, question, etc.): these are the issues you should address in your essay."

[83] The meaning of "address" that should be adopted is that which accords with its usage in s 82 itself. An application under the *P&G Act* is not a document required to address a problem per se nor to be provided in answer to an inquiry. It is a document seeking the grant of a right which must provide information to allow the Minister to decide whether or not to grant that right. In the context of s 82(1)(e), "address" requires the applicant to direct or respond to or deal with the capability requirements in s 43(1)(b) of the *P&G Act*. On its proper construction, "address" does not involve any degree of evaluative components as to the quality of response.

[84] As the Chief Executive submits, if the same word is used in other provisions of the Act, it is presumed that the word has the same meaning throughout the Act and should be given the same meaning unless the context suggests otherwise.[37] The Chief Executive refers to a number of provisions of the *P&G Act* which use the word "address". A number of those provisions use "address" in a similar context to s 82, such as by referring to "address the capability criteria" or "addresses the matters" or "addresses the CSG assessment criteria" in the context of making applications for ATPs or a petroleum lease.[38] They do not on their face call for a different meaning of "address" from that which I have identified above.

[85] Both Icon and the Chief Executive agree that s 82 of the *P&G Act* is a "gateway provision" to identify for an applicant the form and matters which must be addressed in its application. While it may be accepted that the purpose of setting out the requirements of an application under s 82 is to enable an efficient regulatory process so that when the Minister comes to address the application all the relevant information is before him for consideration, the reference to "address" does not implicitly require the carrying out of an evaluation of the information to determine whether the information provided could satisfy the Minister of the capability requirements under s 842(1)–(2).

[86] The meaning of "address" proposed by the Chief Executive does not accord with the natural and ordinary meaning of "address" in the context of "address the

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[37] *Registrar of Titles (WA) v Franzon* (1975) 132 CLR 611 at 618 (Mason J).

[38] See, for example, ss 37, 104(e), 118(b), 172(e), 305(1)(b) and 333(1)(b)(ii). I note while ss 637(2) and 675(1)(s) use "address" and "addressing", it is in a slightly different context.

capability criteria" in s 82(1)(e) of the *P&G Act*. On its ordinary and natural meaning, "address" refers to responding to or directed to the capability criteria.

[87] In considering whether the requirement under s 82(1)(e) has been addressed, the Chief Executive under s 842(1)–(2) of the *P&G Act* is not required to carry out an evaluative exercise of the quality of the information, nor is the Chief Executive's task to determine whether prima facie the Minister could be satisfied of the capability criteria, as opposed to determining whether information has been provided addressing those criteria. That is a matter which is left for the assessment of the Minister who must, under s 84(2)(b) of the *P&G Act*, be satisfied of the capability criteria before granting the application.

"Financial and technical resources"

[88] As to the meaning of "financial and technical resources", it would include funds readily available to an applicant, but it is not limited to that. "Resources" is a broad term, the ordinary meaning of which includes "a source of supply", "money, or any property which can be converted into money; assets", "available means afforded by the mind or the personal capabilities", and "capability in dealing with a situation or in meeting difficulties".[39]

[89] Financial resources relevant to an applicant's capability to carry out authorised activities for the authority in the context of a renewal could include historical information as to past performance in terms of money raised and expended on an ATP during its history and agreements for funding in the future even if conditional and proposals for raising funds. Whether that would be sufficient to satisfy the Minister that the applicant has sufficient financial resources to be capable of carrying out the authorised activities for the authority is another matter.

Was there an error of law?

[90] Given my conclusions above, I have accepted Icon's construction of ss 842 and 82(1)(e) of the *P&G Act* as being the preferred construction which will best achieve the purpose of the *P&G Act* and accords with the language used in the provisions and the context of the provisions having regard to the *P&G Act* as a whole and its

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[39] *Macquarie Dictionary* (online at 12 October 2023) 'resources' (defs 1, 4, 5 and 8).

broader legislative context. I turn to whether the decision-maker misconstrued the meaning of the relevant terms and the task required to be carried out in assessing whether the Renewal Application was made under the requirements of the *P&G Act*.

[91] Although a statement of reasons is not analysed with an expectation of the precision with which one analyses a judgment, it is evident, and I find based on a fair reading of the Reasons, that the decision-maker did engage in an exercise of evaluating the quality of the information provided in the Renewal Application as to financial capability in respect of the capability criteria. In undertaking that exercise, I consider that the decision-maker did ask whether there was sufficient information or substantial information such that the Minister could be satisfied that Icon had the financial resources available to be capable of carrying out authorised activities. In the "Finding on material questions of fact" section of the Reasons, the decision-maker's findings included:

(a) "[t]he provided statements regarding a history of purported capability do not provide the Minister with information which may be assessed on the funds readily available …";[40]

(b) "[i]nsufficient details were provided to establish the relevance or recency of historical fund-raising efforts cited by Icon Energy";[41]

(c) "[t]he Purported Application failed to establish the portion of commitments that were currently funded and what portion was intended to rely on future funding";[42]

(d) "Icon Energy claimed on page 3 of the Financial Capability Statement that they were in discussions with a number of parties wishing to participate in future appraisal and development and that a number of other parties had expressed interest in ATP 855 and are considering direct investment in Icon, however no specific details were provided such as to the number of parties or identity of any party";[43]

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40 Reasons at [38].
41 Reasons at [39].
42 Reasons at [40].
43 Reasons at [42].

(e) "… Icon Energy purported to have signed a non-binding Letter of Intent and Terms Sheet"[44] and "[n]o further details of the contents of the non-binding Letter of Intent or Terms Sheet were provided …"[45]; and

(f) no evidence was provided to support statements made in the Financial Capability Statement.[46]

[92] In the "Reasons for decision" section of the Reasons, the decision-maker made statements such as:

(a) "… I formed the opinion that there was insufficient information for the Minister to be satisfied that Icon Energy has the financial resources necessary to carry out the authorised activities for the authority";[47]

(b) "… I concluded that the Purported Application failed to provide substantial evidence or demonstrably reliable and relevant statements for the Minister's consideration";[48] and

(c) "[t]he failure to establish any of, Icon Energy's readily available funds, the portion of proposed activities reliant on future and prospective funding, or the capability of any third party which Icon Energy may be reliant on for funding are indicative of the absence of information required to allow the Minister to form any opinion about Icon Energy's capability to undertake the $34.75 million of proposed commitments".[49]

[93] The Reasons further state:[50]

> "Having formed this view regarding Icon Energy's Purported Application, and with reference to my findings on the material questions of fact in relation to the requirements under the P&G Act (paragraphs 18-55), I have concluded that the Purported Application was not made in compliance with the requirements of the P&G Act. Specifically, I have concluded that the Purported Application does not address the capability criteria, pursuant to section 82(1)(e) of the P&G Act and does not include the information about the matters that must or may be

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44 Reasons at [43].
45 Reasons at [45].
46 See Reasons at [46]–[47].
47 Reasons at [58] (underlining added).
48 Reasons at [59] (underlining added).
49 Reasons at [60] (underlining added).
50 At [61].

> considered under sections 84 and 86 in deciding the application, pursuant to section 82(1)(f) of the P&G Act."

[94] While the Chief Executive contends that the decision-maker did not assess the material in the Financial Capability Statement with a view to determining whether it permitted the Minister to make a particular kind of decision but rather whether the material was of a kind, the quality or substance of which was required to give the Minister the opportunity to exercise the power, it is evident and I find, having regard to the material findings of fact and reasons for decision, that the decision-maker did assess the quality of the information in the Renewal Application to determine whether the capability criteria were addressed in relation to financial resources and did seek to assess whether the information was capable of satisfying the Minister.

[95] I consider that the decision-maker further erred in construing the requirement for the Renewal Application to "address the capability criteria" as requiring information of a certain quality to be provided in order for the Renewal Application to meet the requirement under s 82(1)(e) of the *P&G Act*. That is demonstrated particularly by the material findings of fact addressing the deficiencies in the quality or sufficiency of the information provided. As set out above, I have found that "address" means to "direct to" or "respond to" the capability criteria.

[96] I am satisfied that the decision-maker:

(a) determined that the requirements of the *P&G Act* were not met insofar as the Renewal Application did not "address" the requirements of the *P&G Act* in s 82(1)(e) which was a jurisdictional fact, by engaging in an assessment of the sufficiency or evidentiary value of the information provided and not an assessment of whether there was information provided which responded to the financial capability criteria. The jurisdictional fact was not the formation of an opinion about the non-compliance of the *P&G Act*; and

(b) in carrying out the assessment, did so for the purpose of determining whether there was sufficient information or substantive information such that the Minister could be satisfied that Icon had the financial resources available to be capable of carrying out the authorised activities.

[97] The third error of law relied upon by Icon is that, as demonstrated by paragraph 38 of the Reasons, the decision-maker misconstrued "capability" as to financial resources in respect of the capability criteria by construing it to require that an applicant be required to have the funds to carry out the authorised activities for the authority "readily available". As has been discussed above, "resources" is a broad term and if the decision-maker construed financial resources to only refer to funds that are "readily available", that would contrary to s 43(1)(b) of the *P&G Act*. However, notwithstanding the reference in paragraph 38 of the Reasons, the other material findings of fact in paragraphs 39 to 47 of the Reasons and the reasons in paragraph 58 do not support the decision-maker having adopted such a narrow construction of financial resources. I do not find that this error of law has been established in misconstruing the meaning of "financial resources".

[98] I am therefore satisfied that the decision-maker erred in law in rejecting the Renewal Application in:

(a) misconstruing the meaning of "address" in s 82(1)(e) of the *P&G Act*; and

(b) asking the wrong question in assessing whether the Renewal Application met the requirement that it "address the capability criteria in s 82(1)(e)" in undertaking the task in s 842(1) by asking whether there was sufficient information or substantial information such that the Minister could be satisfied that Icon had the financial resources available to be capable of carrying out authorised activities for the authority.

[99] Both errors of law are jurisdictional errors.

[100] Even if I had found that the jurisdictional fact was the formation of opinion by the Chief Executive, I would have found that the decision-maker erred in failing to form the opinion in the response to the right question asked by the *P&G Act*[51] given my finding in paragraph 98(b) above.

Materiality

[101] In order to obtain relief, Icon must demonstrate the materiality of the errors of law identified.

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[51] *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407 at 430 and 432.

[102] The question of materiality was recently discussed by the High Court in *Nathanson v Minister for Home Affairs*,[52] where Kiefel CJ, Keane and Gleeson JJ discussed the statutory construction giving rise to materiality, namely that the legislature was unlikely to have intended that a breach that occasions no "practical injustice" will deprive a decision of statutory force.[53] That requires the Court to consider "the basal factual question of how the decision that was in fact made was in fact made".[54] According to Kiefel CJ, Keane and Gleeson JJ:[55]

> "This question is determined by proof of historical facts on the balance of probabilities. Then, it is necessary to consider whether the decision that was in fact made could have been different had the relevant condition been complied with 'as a matter of reasonable conjecture within the parameters set by the historical facts that have been determined'. The burden falls on the plaintiff to prove 'on the balance of probabilities the historical facts necessary to enable the court to be satisfied of the realistic possibility that a different decision could have been made had there been compliance with that condition'."
>
> (footnotes omitted)

[103] The basis of the decision is set out in the notice of the decision and the Reasons. Icon contends that there is a certainty that a different decision would have been made if the decision-maker had asked himself the right question, because the decision-maker would have found that the Renewal Application met the requirements laid down by the *P&G Act*.

[104] The Chief Executive, however, contends that the evidence does not permit the Court to conclude that a different decision could have been made if the decision-maker had not acted in error in relying on financial information in respect of Icon, particularly arising out of its 2021 Annual Report, which inter alia identified that Icon had suffered losses and needed to obtain funding for its projects, particularly ATP 855, in order for it to proceed and material uncertainties and significant risks as to its future. While Icon's Chairman had stated that Icon was hopeful of raising funds, there was no evidence to sustain that hope. The Chief Executive therefore contends that there is nothing in the documents which would have permitted the

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52 (2022) 403 ALR 398 at [30]–[32] (***Nathanson***).
53 *Nathanson* at [31] by reference to *MZAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441 at [45] (***MZAPC***).
54 *Nathanson* at [32] by reference to *MZPAC* at [38].
55 *Nathanson* at [32].

Minister "to form an opinion on whether the applicant was capable of carrying out the authorised activities because that information was ambiguous and insubstantial" if the Renewal Application had been received and processed.

[105] As Icon contends, the Chief Executive focuses on the wrong decision, namely the decision of the Minister, not the decision to refuse to accept the Renewal Application under s 842 of the *P&G Act*.

[106] Given the decision-maker's error arose out of asking himself the wrong question in considering whether Icon had addressed the capability criteria and misconstruing what was required to determine that the Renewal Application had addressed the capability criteria which led to a refusal to accept the Renewal Application, I find that on the balance of probabilities, Icon has proven the historical facts necessary to enable the Court to be satisfied that a different decision could have been made had there been compliance with ss 842 and 82(1)(e) of the *P&G Act*. The Renewal Application contained information as to Icon's financial resources to carry out the authorised activities. There was information as to Icon's past history of fundraising for ATP 855 alone and with joint venture parties, the proposal for funding in the future and the relevance of the state of the resource to raise those funds. That information responded to the requirement in s 82(1)(e) of the *P&G Act* as to financial resources.

[107] Had the decision-maker asked himself the right question in determining whether the Renewal Application met the requirements of the *P&G Act*, I am satisfied on the balance of probabilities that there is a realistic possibility that a different decision could have been made had there been compliance with the terms of the *P&G Act* and the Renewal Application accepted. Whether the Minister would be satisfied of the capability criteria is a separate matter.

Other Grounds

[108] Given I have determined that the decision-maker did err in law in considering the Renewal Application, and Icon has identified that the grounds of failure to take into account relevant considerations and unreasonableness both flow from the errors of law identified, it is unnecessary for me to determine whether the other grounds of

judicial review referred to in paragraphs 3(b) and (c) above which were said by Icon to have flowed from the errors of law identified are established.

Question of Relief

[109] As to the question of whether I grant the declarations sought, given I have determined that the decision was infected by errors of law which constituted jurisdictional errors. I am satisfied that a declaration should be made that the decision is null and void.

[110] Icon also seeks a declaration that the Renewal Application complied with the provisions of the *P&G Act* when made. The only requirement which the decision-maker found was not made in compliance with the *P&G Act* was that the Renewal Application did not address the capability criteria pursuant to s 82(1)(e) having regard to financial resources. In particular, the decision-maker formed the opinion that there was insufficient information for the Minister to be satisfied that Icon had the financial resources necessary to carry out the authorised activities.

[111] I have found that the compliance with the requirements of the *P&G Act* under s 82 is a jurisdictional fact. In those circumstances, the Court can determine whether as a matter of fact the Renewal Application did address the requirements of s 82(1)(e) by providing information which addressed Icon's financial resources available to carry out the authorised activities of the authority, having regard to the information before the decision-maker as well as any additional evidence before the Court.[56] The Renewal Application did address Icon's financial capability by referring to financial statements, its past track record in the petroleum exploration and production sector, its ability to raise capital through ASX stock market listings, as well as the money raised for exploration projects in the past, the potential size of the resource on ATP 855, and the money expended in relation to ATP 855. Reference was also made to a non-binding letter of intent and terms sheet to raise $100 million in a staged investment process announced to the market on 7 September 2022. The affidavits of Mr James verified the accuracy of those facts, which I accept were not the subject of challenge. It was not suggested by the decision-maker that Icon had not provided information as to its financial resources but rather the deficiency raised was the

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[56] *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707 at [105].

sufficiency of information and absence of funds readily available to meet the commitments of $34.75 million. To the extent that the information in the Renewal Application does set out information as to financial resources to demonstrate Icon's capability to carry out the authorised activities, albeit that those resources may ultimately be found to be inadequate for that purpose, I consider that that the Renewal Application does address the capability criteria and the requirement in s 82(1)(e) of the *P&G Act* which is a jurisdictional fact satisfied by Icon. Whether the Minister will find that Icon has satisfied the capability criteria is a matter for the Minister and whether he forms the requisite opinion in that regard.

[112] I note that in relation to the requirement in s 82(1)(b) of the *P&G Act* that the decision-maker determined that the Renewal Application substantially complied with the requirement.[57] That was not the subject of challenge. Given I have found that the requirement in s 82(1)(e) was addressed, that would suggest that the appropriate declaration is that the Renewal Application substantially complied with the requirements. The parties should confer and provide an agreed form of declaration within seven days. In the event such declaration cannot be agreed, the matter will be listed for a short hearing.

Costs

[113] Icon sought costs of the application in its Amended Application for Statutory Order of Review. Given its success, costs should follow the event.

Orders

[114] The parties should provide a draft order as to the declarations which I have found should be made and as to costs within seven days, failing which the matter will be listed for a short hearing as to the form of relief.

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[57] Reasons at [30].