SUPREME COURT OF QUEENSLAND

CITATION:	*Lock the Gate Alliance Ltd v The Minister for Natural Resources and Mines* [2018] QSC 21
PARTIES:	**LOCK THE GATE ALLIANCE LTD** (Applicant) **v** **THE MINISTER FOR NATURAL RESOURCES AND MINES** (Respondent)
FILE NO/S:	BS No 8824 of 2017
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	22 February 2018
DELIVERED AT:	Brisbane
HEARING DATE:	15 November and 5 December 2017
JUDGE:	Bowskill J
ORDER:	**The application is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REFUSAL OF REQUESTS FOR REASONS – where the applicant environmental organisation seeks a statement of reasons for a decision made under s 318AAV of the *Mineral Resources Act* 1989 giving indicative approval for the transfer of a mining lease relating to the Blair Athol coal mine – whether the decision to give indicative approval is a decision to which the *Judicial Review Act* 1991 applies – whether the applicant is a person whose interests are adversely affected by the decision such that it is entitled to request a statement of reasons for the decision *Judicial Review Act* 1991 (Qld), ss 4, 7, 20, 31, 32, 38 *Mineral Resources Act* 1989 (Qld), ss 318AAV, 318AAW, 318AAX *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council* (2007) 162 FCR 313 *Alliance to Save Hinchinbrook Inc v Cook* [2007] 1 Qd R 102 *Argos Pty Ltd v Corbell* (2014) 254 CLR 394 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 *Australian Conservation Foundation Incorporated v Commonwealth* (1980) 146 CLR 493 *Australian Conservation Foundation v Minister for*

Resources (1989) 19 ALD 70
Bridgetown/Greenbushes Friends of the Forest Inc v Executive Director of the Department of Conservation and Land Management (1997) 18 WAR 126
Central Queensland Speleological Society Incorporated v Central Queensland Cement Pty Ltd (No 1) [1989] 2 Qd R 512
Griffith University v Tang (2005) 221 CLR 99
H A Bachrach Pty Ltd v Minister for Housing (1994) 85 LGERA 134 at 137
Minister Administering the Mineral Resources Development Act 1995 v Tarkine National Coalition Inc (2016) 24 Tas R 357
North Coast Environment Council Inc v Minister for Resources (1994) 55 FCR 492
North Queensland Conservation Council Inc v Executive Director, Qld Parks & Wildlife Service [2000] QSC 172
Onus v Alcoa of Australia Ltd (1981) 149 CLR 27
Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health (1995) 56 FCR 50
Save the Ridge Inc v Australian Capital Territory (2004) 133 LGERA 188
Tarkine National Coalition Inc v Minister Administering the Mineral Resources Development Act 1995 (2016) 214 LGERA 327
United States Tobacco Co v Minister for Consumer Affairs (1988) 20 FCR 520

COUNSEL:	J Hewson for the applicant M Hickey for the respondent
SOLICITORS:	Environment Defenders Office for the applicant Crown Law for the respondent

Introduction

[1] Lock the Gate Alliance Ltd applies under s 38 of the *Judicial Review Act* 1991 (Qld) (**JR Act**) for an order that the respondent provide it with a statement of reasons in relation to a decision made by a delegate of the Minister under s 318AAV of the *Mineral Resources Act* 1989 (Qld) (**MRA**) to give indicative approval for the transfer of mining lease 1804 which relates to the Blair Athol coal mine.

[2] Under s 32(1) of the JR Act, if a person makes a decision to which the Act applies (ss 4 and 31), a person who is entitled to make an application to the court under s 20, in relation to the decision, may request the person to provide a written statement in relation to the decision. Under s 20(1) a "person who is aggrieved" may apply for a statutory order of review in relation to the decision. A "person who is aggrieved" is a person whose interests are adversely affected by the decision (s 7(1)(a)). Section 38(2) confers a discretion on

the court to order the decision-maker to give the statement of reasons, if the court considers the requester was entitled to make the request.

[3] The application is opposed by the respondent on two bases:

(a) Firstly, because the decision to give an indicative approval is not a decision to which the JR Act applies, for the purposes of s 4 of that Act, as it has been interpreted. The respondent accepts the decision is of an administrative character and was made under an enactment, but submits it is not a decision which is "final or operative and determinative, at least in a practical sense, of the issue of fact falling for consideration".[1]

(b) Secondly, Lock the Gate is not a "person who is aggrieved" by the decision to give an indicative approval, because its interests are not adversely affected by the decision.

Legislative context

[4] Chapter 7, part 1 of the MRA contains provisions regulating dealings with mining tenements, including a transfer of a mining tenement.[2] There are two kinds of transfers provided for, non-assessable transfers and assessable transfers (s 318AAR). In order to effect an assessable transfer, it is necessary to obtain approval under the MRA.

[5] Section 318AAW provides for the holder of a mining tenement to apply for approval of an assessable transfer, as follows:

> "**318AAW Applying for approval of assessable transfer**
>
> (1) The holder of a mining tenement may apply for approval of an assessable transfer for the mining tenement.
>
> (2) An application under subsection (1) must be –
>
> (a) made to the Minister; and
>
> (b) in the approved form; and
>
> (c) accompanied by –
>
> (i) a written consent to the transfer by the proposed transferee; and

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1 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 337 per Mason CJ.

2 The parties were agreed that the relevant version of the MRA is as at 1 July 2016, which was the form the Act was in when the application for an indicative approval was made on 13 September 2016. The relevant provisions were later replaced, under the *Mineral and Energy Resources (Common Provisions) Act 2014*, which commenced 27 September 2016.

(ii) if the mining tenement or a share in the mining tenement is subject to a mortgage – a written consent to the transfer by the mortgagee; and

(iii) for a transfer of a share in a mining tenement – a written consent to the transfer by each person, other than the transferor, who holds a share in the mining tenement; and

(iv) the fee prescribed under a regulation.

…

(5) However, an application under subsection (1) … can not be made under this section if the proposed transferee is not an eligible person."[3]

[6] Section 318AAV enables the holder of a mining tenement, before applying for approval of an assessable transfer, to apply for an indication whether the transfer is likely to be approved and an indication of any likely conditions, as follows:

"**318AAV Indicative approval**

(1) The holder of a mining tenement … may, before applying for approval of an assessable transfer for the mining tenement … apply–

(a) for an indication whether the transfer is likely to be approved (an ***indicative approval***); and

(b) if conditions are likely to be imposed on the giving of the approval – for an indication what the conditions are likely to be.

(2) The application must be –

(a) made to the Minister; and

(b) in the approved form; and

(c) accompanied by –

(i) the information the Minister requires to make a decision; and

(ii) the fee prescribed under a regulation.

(3) In deciding whether or not to give the indicative approval, the Minister must consider the matters mentioned in section

[3] As defined in schedule 2 to the MRA, "eligible person" means, relevantly, an adult or a company.

318AAX(2) as if the request were an application for approval of an assessable transfer.

(4) The Minister must decide whether or not to give the indicative approval and give the applicant notice of the decision."[4]

[7] Section 318AAX outlines the process for deciding an application for approval, as follows:

"**318AAX Deciding application**

(1) The Minister must decide whether or not to give the approval of the assessable transfer.

(2) In deciding whether or not to give the approval, the Minister must consider –

(a) the application for approval and any additional information accompanying the application; and

(b) for an assessable transfer other than an application relating to a mining claim – whether the transferee has the human, technical and financial resources to comply with –

(i) if the application relates to an exploration permit – the conditions of the exploration permit under section 141; or

(ii) if the application relates to a mineral development licence – the conditions of the mineral development licence under section 194; or

(iii) if the application relates to a mining lease – the conditions of the mining lease under section 276; and

(c) the public interest.

(3) However, subsection (2) does not apply if, under subsection (6) or (7), the approval is taken to have been given.

(4) The approval may be given only if –

(a) the proposed transferee is –

(i) an eligible person; and

(ii) for a mining tenement for other than small scale mining activities – a registered suitable operator under the Environmental Protection Act; and

[4] Underlining added.

(b) for a transfer of a mining tenement or of a share in a mining tenement – no royalty payable under this Act by the holder of the mining tenement remains unpaid.

(5) Also, the Minister may refuse to give the approval if the Minister is not satisfied the transferor has substantially complied with the conditions of the mining tenement.

(6) The approval is taken to have been given if –

(a) under section 318AAV, an indicative approval has been given for the proposed dealing; and

(b) subsection (4) does not prevent the giving of the approval; and

(c) within 3 months after the giving of the indicative approval –

(i) an application for approval of the assessable transfer is made; and

(ii) if, under section 318AAV, an indication of likely conditions was given – the conditions are complied with.

…

(8) Despite subsections (6) and (7), the approval of the assessable transfer is taken not to have been given if –

(a) the request for indicative approval contained incorrect material information or omitted material information; and

(b) had the Minister been aware of the discrepancy, the Minister would not have given the indicative approval."[5]

[8] There is a requirement to give the applicant for the approval written notice of the decision, whether that is to give the approval or not (s 318AAZ). A person whose interests are affected by a decision to *refuse* to approve a transfer has a right of appeal to the Land Court (s 318AAZM). There is no appeal right conferred by the MRA in relation to a decision to give or refuse an indicative approval.

Decision to give indicative approval

[9] In this case, an application for indicative approval of an assessable transfer of ML 1804 was made on 13 September 2016.[6] The decision to give indicative approval for the

[5] Underlining added.
[6] Exhibit NB-2 to Buchanski, pp 5-12.

transfer of the mining lease, subject to certain conditions, was made on 20 February 2017.[7] This is the decision in respect of which Lock the Gate seeks a statement of reasons. The conditions of the indicative approval were amended on 31 March 2017.[8]

Approval for the transfer

[10] On 11 May 2017 a transfer application was lodged by the "current holders" of the mining lease, under s 318AAW, relying upon the indicative approval, and compliance with the conditions of it.[9]

[11] The process undertaken by Ms Munro, the Minister's delegate, in considering the application, is described by her as follows:

> "8. … Using a series of automated 'prompts' or questions generated by the MMOL system[10] and by clicking on hyperlinks to view documents stored within that system, I satisfied myself of each of the following matters:
>
> (a) the transfer application had been made to the Minister in the approved form;
>
> (b) the transfer application was accompanied by written consent to the transfer by Orion and each of the applicants;
>
> (c) ML 1804 was not subject to a mortgage and therefore no written consent to the transfer by a mortgagee was required for the transfer application;
>
> (d) the prescribed fee for the transfer application had been paid;
>
> (e) Orion was an eligible person under the pre-amended MR Act and a registered suitable operator under the *Environmental Protection Act 1994*;
>
> (f) no royalty, payable under the pre-amended MR Act by the applicants as holders ML 1804, remained unpaid; and
>
> (g) the applicants had substantially complied with the conditions of ML 1804.
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> 9. My consideration of each of the matters listed in paragraph 8 was recorded in the MMOL system as responses to what are described in

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7 Exhibit CTF-06 to Flint, pp 64-65.
8 Exhibit CTF-06 to Flint, pp 80-82.
9 Exhibit MAM-2 to Munro.
10 The MMOL system is an online portal known as My Mines Online, through which the work of administering coal mining tenures is done: Munro at [4].

the MMOL system as 'verification criteria'. The verification criteria for the transfer application correspond to the matters of which the Minister was required under sections 318AAW(2), 318AAX(4) and 318AAX(5) of the pre-amended MR Act to be satisfied…

10. The 'activity reference general' field in the MMOL system[11] described the 'activity type' as a 'transfer with prior indication'. I know from previous experience with the MMOL system that, for the system to have generated an activity reference with that activity type description, information must have been previously saved into the system to confirm that indicative approval for an assessable transfer of ML 1804 had been previously given.

11. The 10th 'verification criteria' for the transfer application concerned compliance with all indicative approval conditions. After reviewing the transfer application and other hyperlinked documents attached to it in the MMOL system, I was satisfied that all conditions on the indicative approval had been complied with within 3 months after the indicative approval had been given.[12] On that basis, I was satisfied that approval for the assessable transfer had been taken to have been given under section 318AAX(6) of the pre-amended MR Act and I did not need to, and I did not, consider the matters in section 318AAX(2) of the pre-amended MR Act.

12. After I answered all of the MMOL system prompts or questions for the 'verification criteria', the MMOL system gave me an automated prompt to approve or not approve the transfer. As I was satisfied the requirements of section 318AAW and 318AAX of the pre-amended MR Act were satisfied for the proposed transfer, I made the decision as the Minister's delegate to approve the assessable transfer of ML 1804 to Orion."[13]

Is the indicative approval a decision to which the JR Act applies?

[12] Lock the Gate first requested a statement of reasons in relation to the indicative approval decision on 17 March 2017. It made further subsequent requests. These were refused, on each occasion for the reason that Lock the Gate's environmental and community activities do not rise to the level of an interest that is adversely affected by a decision about the potential transfer of an existing mining lease from one entity to another.

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11 See exhibit MAM-4 to Munro, at p 75.
12 See also the affidavit of Ms Buchanski as to satisfaction of the conditions.
13 Underlining added.

[13] As noted, however, in opposing this application the respondent first contends the indicative approval is not a decision to which the JR Act applies (s 4), therefore not a decision to which part 4 of that Act (reasons for decision) applies (s 31).

[14] In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 337 Mason CJ said that:

> "… a reviewable 'decision' is one for which provision is made by or under a statute. That will generally, but not always, entail a decision which is final or operative and determinative, at least in a practical sense, of the issue of fact falling for consideration. A conclusion reached as a step along the way in a course of reasoning leading to an ultimate decision would not ordinarily amount to a reviewable decision, unless the statute provided for the making of a finding or ruling on that point so that the decision, though an intermediate decision, might accurately be described as a decision under an enactment.
>
> Another essential quality of a reviewable decision is that it be a substantive determination…"

[15] In *Griffith University v Tang* (2005) 221 CLR 99 the High Court further considered the meaning of a "decision of an administrative character made …under an enactment". The focus of the decision was on the latter part of the definition, but as Gummow, Callinan and Heydon JJ noted, although the cases have tended to focus on discrete elements of the definition, "there are dangers in looking at the definition as other than a whole". Their Honours' discussion of the preferred construction of the phrase provides further guidance as to the character of a reviewable decision:

> "[79] The decision so required or authorised [by the enactment] must be 'of an administrative character'. This element of the definition casts some light on the force to be given by the phrase '*under* an enactment'. What is it, in the course of administration, that flows from or arises out of the decision taken so as to give that significance which has merited the legislative conferral of a right of judicial review upon those aggrieved?
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> [80] The answer in general terms is the affecting of legal rights and obligations. Do legal rights or duties owe in an immediate sense their existence to the decision, or depend upon the presence of the decision for their enforcement? To adapt what was said by Lehane J in *Lewins*,[14] does the decision in question derive from the enactment the capacity to affect legal rights and obligations? Are legal rights and obligations affected not under the general law but by virtue of the statute?
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> …

[14] *Australian National University v Lewins* (1996) 68 FCR 87 at 103.

> [85] The legal rights and obligations which are affected by the authority of the decision derived from the enactment in question may be those rights and obligations founded in the general or unwritten law…
>
> [86] However, that which is affected in the fashion required by the statutory definition may also be statutory rights and obligations. An example is that given by Toohey and Gaudron JJ in *Bond* [at 377] of a requirement, as a condition precedent to the exercise of a substantive statutory power to confer or withdraw rights (eg, a licence), that a particular finding be made. The decision to make or not to make that finding controls the coming into existence or continuation of the statutory licence and itself is a decision made under an enactment.
>
> …
>
> [89] The determination of whether a decision is 'made … under an enactment' involves two criteria: first, the decision must be expressly or impliedly required or authorised by the enactment; and, secondly, the decision must itself confer, alter or otherwise affect legal rights or obligations, and in that sense the decision must derive from the enactment. A decision will only be 'made … under an enactment' if both these criteria are met. It should be emphasised that this construction of the statutory definition does not require the relevant decision to affect or alter *existing* rights or obligations, and it will be sufficient that the enactment requires or authorises decisions from which new rights or obligations arise. Similarly, it is not necessary that the relevantly affected legal rights owe their existence to the enactment in question. Affection of rights or obligations derived from the general law or statute will suffice."[15]

[16] On the application of these principles, the decision of the Minister under s 318AAV, giving an indication whether the transfer of a mining tenement is likely to be approved, is a decision with the requisite qualities of a decision to which the JR Act applies.

[17] It is "final or operative and determinative", at least in a practical sense, of the matters the Minister is required to consider under s 318AAX(2) before approval can be given for an assessable transfer. That is made clear by ss 318AAX(3) and (6) – the effect of which is that if an indicative approval has been given for the proposed transfer, and the conditions have been complied with, the approval is "taken to have been given", and the Minister does not have to reconsider or decide the substantive matters in s 318AAX(2) again. That is apparent from the description given by Ms Munro, the Minister's delegate, of the approach she took in making the decision upon the actual transfer application.

[18] The decision to give an indicative approval does derive, from the MRA provisions, the capacity to affect legal rights and obligations. Having obtained an indicative approval, provided the conditions of it are complied with, and the matters in s 318AAX(4) are

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[15] References omitted. Underlining added.

satisfied (essentially, that the transferee is an eligible person, and no royalty payment remains unpaid), the actual approval of the assessable transfer is effectively a certainty: as s 318AAX(6) states, "the approval is taken to have been given".

[19] As is made clear in [89] of *Griffith University v Tang*, it is not necessary that the relevant decision affect or alter existing rights or obligations, it will be sufficient that the enactment requires or authorises decisions from which new rights or obligations arise. The scheme that is provided for under the MRA, enabling parties proposing the transfer of a mining tenement to apply to the Minister for indicative approval, prior to an actual application being made; and the operational effect of that indicative approval, once the actual application is made – that is, deeming the approval to have been given, if the conditions have been complied with – make it plain, in my view, that the decision to give the indicative approval is a substantive one, determinative in a practical sense of the key considerations in deciding whether approval for a transfer should be given (that is, s 318AAX(2)). The decision to give an indicative approval has the capacity to affect existing and new rights or obligations, under the MRA, and derives its capacity to do so from the MRA provisions (notably, s 318AAX(3) and (6)).

Is Lock the Gate a person who is aggrieved by the decision?

[20] The next question is whether Lock the Gate is a person (or entity) "whose interests are adversely affected by the decision" (ss 20(1) and 7).

[21] In determining the question whether a person's interests are affected by a decision, it is necessary to consider the legal effect and (practical) operation of the decision, and then to make a judgment as to whether the legal or practical operation of the decision has been to result in an adverse effect on identified interests of the person.[16]

[22] As Hayne and Bell JJ said in *Argos Pty Ltd v Corbell* (2014) 254 CLR 394 at [61]:

> "The interests that may be adversely affected by a decision may take any of a variety of forms. They include, but are not confined to, legal rights, privileges, permissions or interests. And the central notion conveyed by the words is that the person claiming to be aggrieved can show that the decision will have an effect on his or her interests which is different from (beyond) its effect on the public at large."[17]

[23] In the same case at [48] French CJ and Keane J said that:

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[16] *Argos Pty Ltd v Corbell* (2014) 254 CLR 394 at [43] per French CJ and Keane J and at [76] per Gageler J.

[17] See also at [28] and [48] per French CJ and Keane J and at [86] per Gageler J. See also *Australian Conservation Foundation v The Commonwealth* (1980) 146 CLR 493 at 547 per Mason J; *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27 at 35-37 per Gibbs CJ, at 41-42 per Stephen J and at 73-74 per Brennan J; *United States Tobacco Co v Minister for Consumer Affairs* (1988) 20 FCR 520 at 527; and *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 56 FCR 50 at 65-66 per Lockhart J.

> "In summary, as Lockhart J said in the *Right to Life Case*, '[t]he term 'a person aggrieved' is not a restrictive one; it is of very wide import'.[18] The courts should not be astute to graft restrictions onto the general language of [s 7 of the JR Act]. It must be borne in mind that the [JR Act] is intended to facilitate judicial review of administrative decisions made under a wide range of statutes and having a wide range of practical effects upon members of the community. The availability of judicial review serves to promote the rule of law and to improve the quality of administrative decision-making as well as vindicating the interests of persons affected in a practical way by administrative decision-making."[19]

[24] Gageler J, at [86], emphasised the requirement "that the applicant demonstrates genuine affection of an interest which attaches to him",[20]which his Honour said[21] means that "if the interests relied on are of such a kind that a decision of the given character could not affect them directly, there must be some evidence to show that the interests are in truth affected".

[25] In terms of the legal effect of the decision to give an indicative approval, it is an indication, by the Minister, that a proposed transfer of a mining tenement is likely to be approved, if the conditions set out in the indicative approval are satisfied. Without the making of an application for approval of the proposed transfer, it has no further effect.

[26] The practical effect of the decision, however, flows from the fact that it involves a determination of the substantive matters required to be considered before the proposed transfer could be approved (the matters set out in s 318AAX(2)). That determination is not revisited upon the actual transfer application being made (other than in the circumstances contemplated by s 318AAX(8)), but results in a deemed approval, provided the conditions of the indicative approval have been met. This enables the approval for the transfer to be given in an efficient and streamlined way, providing clarity and certainty for the proposed transferee and transferor.

[27] Turning then to the question whether the legal or practical operation of the decision has been to result in an adverse effect on the identified interests of Lock the Gate.

What are the identified interests of Lock the Gate?

[28] In the amended application, Lock the Gate contends it is aggrieved by the decision because it:

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[18] See also at [60] per Hayne and Bell JJ.

[19] Underlining added.

[20] By reference to the decision of the Full Court of the Federal Court in *United States Tobacco Co v Minister for Consumer Affairs* (1988) 20 FCR 520 at 529.

[21] In the words of Brennan J in *McHattan v Collector of Customs* (1977) 18 ALR 154 at 157, adopted by the Full Court in *United States Tobacco* at 529-530.

> "1. was at all material times and is a company incorporated in Queensland and limited by guarantee whose objects include the protection of the natural environment from the impacts of mining; and
>
> 2. has a demonstrated special interest in protection of the environment with respect to mining impacts and rehabilitation in relation to the Blair Athol Mine, that is greater than the interest of the community at large or a section thereof, which has been adversely affected by the decision in that the decision ultimately allows for an activity that would be detrimental to the environmental values sought to be protected by the applicant."[22]

[29] In its reply submissions at [26], Lock the Gate's interests are described as follows:

> "[Lock the Gate's] interests, consistent with the objects of its Constitution, concern the protection and conservation of Australia's environment, including education, promotion and acting as advocate for members of the Australian public."

[30] Lock the Gate became registered as a public company limited by guarantee in March 2012. The objects of Lock the Gate, as set out in clause 6 of its Constitution, are as follows:

> "(a) to protect and enhance farmland and environmentally sensitive areas and to prevent their degradation as a result of uncontrolled or inappropriate development;
>
> (b) to engage in and promote conservation of native Australian species of flora and fauna;
>
> (c) to preserve the viability and productive capacity of Australian farm and grazing lands;
>
> (d) to protect and conserve ground and surface water systems throughout Australia;
>
> (e) to educate the Australian community generally as to the impact of uncontrolled development on the natural environment whether that development is as a result of fossil fuel or mineral extraction or the associated activities of such industries ('the mining industry') or otherwise;
>
> (f) to publicise the need for appropriate environmental regulation of the mining industry;

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[22] Underlining added.

(g) to act as advocate for members of the Australian public whose properties, livelihoods, or health are adversely affected by the degradation of the natural environment and in particular by the activities of the mining industry in rural, regional and urban areas;

(h) to join with other organisations which share the goals of the company for the purpose of running campaigns;

(i) to establish and maintain a Public Fund with the objectives and on the terms and conditions set out in clause 73; and

(j) to protect and conserve those areas of the maritime environment detrimentally affected by the mining industry and its associated activities."

[31] In the affidavit of Ms Flint, the Campaign Director of Lock the Gate, it is described as "a national organisation made up of over 97,000 supporters and more than 250 local groups who are concerned about unsafe coal and gas mining", located in all parts of Australia. Across Queensland, it is said to have "approximately 23,000 supporters". In the region surrounding the Blair Athol mine, "including the townships of Clermont, Emerald, Moranbah, Dysart and surrounds", Lock the Gate is said to have "at least 30 supporters".[23] Ms Flint does not say in what capacity these people are "supporters" (that is, whether they are paid up members of the company, or supporters in some other capacity) but in any event no reliance is placed on any impact of the decision on them as individuals.[24]

[32] At [55] of its primary submissions, Lock the Gate submits that its "interest and proximity to the Decision is exemplified by its activities in two key respects:

(a) in respect of the Blair Athol Mine specifically, the Applicant has a genuine concern regarding the adequacy of rehabilitation and management of the Blair Athol mine, including, in particular, the potential transfer from Rio Tinto to Orion, and has undertaken subsequent activities in respect of that concern;

(b) in respect to mine rehabilitation more broadly, the Applicant has been actively involved in the Queensland Government's review of the regulatory framework for mine rehabilitation and related financial assurance regime."[25]

[33] The activities in relation to the Blair Athol mine are outlined by Ms Flint as follows:

(a) In February 2016 she became aware, by way of a media report, of the proposed sale of the mine by a joint venture, headed by Rio Tinto, to Orion Mining Pty Ltd, "a subsidiary of a junior minor (sic) company TerraCom Ltd, for AUD$1" (at [17]).

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[23] Ms Flint at [15].
[24] T 1-8.
[25] Underlining added.

(b) She says she was aware that "TerraCom auditors raised doubts in the 2015 Annual Report as to its ability to 'continue as a going concern'". As a result Ms Flint says Lock the Gate "developed concern that the rehabilitation obligations in respect of the Blair Athol Mine would not be carried out and that the Queensland taxpayer would be at risk of having to pay for any outstanding rehabilitation required" (at [18]).

(c) In light of this concern, Lock the Gate (or a representative of it) has undertaken a number of activities specifically regarding the Blair Athol mine, namely:

(i) producing a report, in May 2016, on the mine, setting out the case for immediate and full rehabilitation (at [21] and exhibit CTF-04);

(ii) "co-organising" a public meeting in Clermont in June 2016 "to engage and provide information to the local community about the risks associated with the sale of the Blair Athol Mine and to discuss whether compelling Rio Tinto to complete the rehabilitation was a better long-term option for the community" (at [22]);

(iii) (a representative) meeting with the Director for Coal Mining Operations and the Coal Assessment Manager, at the Department of Natural Resources and Mines (DNRM) in June 2016 "to discuss LTG's concerns about the potential sale of the Blair Athol Mine" (at [24]);

(iv) after becoming aware in July 2016, from an ASX announcement by TerraCom, that TerraCom was planning to lodge an application for transfer of the mining lease, arranging to meet with the Environment Minister "to discuss its concerns with the Mining Lease Transfer" (at [25]-[26]);

(v) also in July 2016, conducting "a review of the Blair Athol Financial Assurance calculation" (which concluded that the "current level of financial assurance held by the Queensland Government for the Blair Athol Mine was inadequate to cover the full cost of rehabilitation") and submitting that to the Environment Minister, and Department of Environment and Heritage Protection (DEHP), for consideration (at [27]);

(vi) (a representative) meeting with the Deputy Directors General of the DEHP and DNRM in September 2016 "regarding a potential transfer of the mining lease for the Blair Athol Mine and proposed reforms to the Queensland regulatory regime governing mine rehabilitation" (at [28]).

[34] In relation to mine rehabilitation more broadly Ms Flint says, among other things, that:

(a) This is one of Lock the Gate's "key interest topics and significant campaign areas" ([33]).

(b) As a result of Lock the Gate's "view that improved mine rehabilitation can reduce the financial risk posed to Queensland taxpayers and also improve environmental outcomes that benefit local communities and the State more broadly" ([37]), it has "taken a number of relevant actions aimed at dramatically improving relevant regulation" ([38]), for example:

(i) since February 2016, engaging a consultant dedicated to supporting the reform of Queensland's mine rehabilitation regulatory regime ([39]);

(ii) making a submission in March and April 2016 on the Queensland Environmental Protection (Chain of Responsibility) Amendment Bill 2016 ([41]);

(iii) producing a report in July 2016 entitled "Mine Rehabilitation and Closure Cost – a Hidden Business Risk", which was presented to investors in Sydney and Melbourne, and also to the QTC (Queensland Treasury Corporation) as part of its current review of the State's financial assurance regime ([42]);

(iv) producing a report in September 2016 on the deficiencies of the Queensland Government's Mining Financial Assurance Calculator, which it submitted to DEHP and QTC ([43]).

[35] Lock the Gate also relies on publications in which it says it has been recognised by the Queensland government. The first is a discussion paper entitled "Better Mine Rehabilitation for Queensland", prepared for the Queensland government interdepartmental committee on financial assurance for the resource sector. This document includes the statement that "the community expects that a mine site will be rehabilitated", following which there is a footnote referring to a document accessible on Lock the Gate's website entitled "Greens' mine rehabilitation policy strongly aligned with public opinion".[26] The second is a report prepared by the Queensland Treasury Corporation entitled "Review of Queensland's Financial Assurance Framework", which includes at table 1 a list of "stakeholders engaged". Lock the Gate is included as one of six "environmental groups".[27]

[36] Lock the Gate submits that:

> "The activities undertaken by the Applicant, in particular the reports prepared in opposition of any transfer of the Blair Athol Mine from Rio Tinto, the meeting it co-organised in the local community to discuss risks associated with a transfer, as well as the numerous meetings held with representatives from the Respondent's department and with the Minister and a director general of the Department of Environment and Heritage Protection to discuss

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[26] Affidavit of Humphries, exhibit RH-01 (at p 42).

[27] Affidavit of Humphries, exhibit RH-02 (at p 82). The other environmental groups referred to are the World Wildlife Fund, the Environmental Defenders' Office, the Mackay Conservation Group, the Queensland Conservation Council and the Wildlife Preservation Society of Queensland.

> the transfer of the Blair Athol Mine, show the close proximity of the Applicant's interests with the subject of the indicative approval."[28]

[37] And, further, that its:

> "interests will be adversely affected if the transfer of the Mining Lease from Rio Tinto to Orion proceeds because there will potentially be a reduced likelihood that rehabilitation requirements under the Mining Lease will be complied with. That would then result in a significant risk that the cost of rehabilitation will fall to the public or alternatively, the mine site may never be rehabilitated, resulting in significant environmental harm."[29]

[38] As counsel for Lock the Gate acknowledged, the interest it says is affected by the decision is "essentially" the public interest, because of the risk that the public might have to pay the costs of rehabilitating the land if the incoming transferee cannot; as well as the risk of environmental harm, if the rehabilitation work is simply not carried out at all.[30]

[39] In this regard, Lock the Gate emphasises that, under s 318AAV(3) and, in turn, s 318AAX(2)(c), one of the matters the decision-maker has to take into account, in deciding whether to give indicative approval, is the public interest.

Is Lock the Gate's identified interest adversely affected by the decision?

[40] There are two aspects to the respondent's contention that Lock the Gate does not have an interest that could be said to be adversely affected by the decision: first, the respondent submits Lock the Gate's interests are not adversely affected by the decision because it is not a decision which is capable of affecting interests, being no more than an indication of the likelihood of approval of a transfer, if particular conditions are complied with; and, second, that in any event Lock the Gate has not identified a special interest in the subject-matter of the decision, above that of any ordinary member of the public, and accordingly is not entitled to request reasons for the decision.

[41] I propose to deal with the second of these points first.

Relevant authorities

[42] The starting point for consideration of the rules as to standing is the High Court's decision in *Australian Conservation Foundation Incorporated v Commonwealth* (1980) 146 CLR 493. Although this was not a case on the meaning of "person aggrieved" in the context of judicial review statutes, the principles as to standing enunciated in it have regularly been acknowledged as applying in this context.[31] In this case, the ACF sought to

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[28] Reply submissions at [28].
[29] Primary submissions at [71].
[30] T 1-8.24.
[31] See, for example, *Argos Pty Ltd v Corbell* at [33]; see also *United States Tobacco Co v Minister for Consumer Affairs* (1988) 20 FCR 520 at 529; *Australian Conservation Foundation v Minister for Resources* (1989) 19

challenge the validity of a decision to approve a proposal to establish and operate a resort at Farnborough in central Queensland and to approve exchange control transactions in relation to that proposal.

[43] The rule as to standing was articulated by Gibbs J at 526-527 of *Australian Conservation Foundation Incorporated v Commonwealth*. As his Honour, then Gibbs CJ, summarised in *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27 at 35-36:

> "A plaintiff has no standing to bring an action to prevent the violation of a public right if he has no interest in the subject matter beyond that of any other member of the public; if no private right of his is interfered with he has standing to sue only if he has a special interest in the subject matter of the action. The rule is obviously a flexible one since… the question what is a sufficient interest will vary according to the nature of the subject matter of the litigation."

[44] In *Australian Conservation Foundation v The Commonwealth,* applying that rule to the ACF, Gibbs J said, at 530-531:

> "I would not deny that a person might have a special interest in the preservation of a particular environment. However, an interest for present purposes, does not mean a mere intellectual or emotional concern. A person is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails. A belief, however strongly felt, that the law generally, or a particular law, should be observed, or that conduct of a particular kind should be prevented, does not suffice to give its possessor locus standi. If that were not so, the rule requiring special interest would be meaningless. Any plaintiff who felt strongly enough to bring an action could maintain it."

[45] Gibbs J found that the ACF had no special interest in the preservation of the particular environment, and none in the developer company's exchange control transactions. The ACF had sought to show an interest in two ways: first, because of the nature of the ACF's objects and, secondly, because of the fact that it had sent written comments when the draft environmental impact statement was made available for public comment. In relation to these matters, Gibbs J said, at 531:

> "The fact that the Foundation is incorporated with particular objects does not strengthen its claim to standing. A natural person does not acquire standing simply by reason of the fact that he holds certain beliefs and wishes to translate them into action, and a body corporate formed to advance the same

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ALD 70 at 72 per Davies J; *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 56 FCR 50 at 63 per Lockhart J.

> beliefs is in no stronger position. If it is the fact that some members of the Foundation have a special interest – and it is most unlikely that any would have a special interest to challenge the exchange control transaction – it would not follow that the Foundation has locus standi, for a corporation does not acquire standing because some of its members possess it…
>
> The fact that the Foundation had sent written comments which [the company] was required to take into account in revising its draft environmental impact statement did not give the Foundation standing to bring the present action. A person who is concerned enough about proposed action to furnish his comments on it does not necessarily have any interest in the proposed action in the relevant sense. The fact that the Foundation sent the written comments, as permitted by the administrative procedures, is logically irrelevant to the question whether it has a special interest giving it standing. That fact would only have some significance in relation to this question if the administrative procedures revealed an intention that a person who sent written comments thereby acquired further rights… that is not the case."

[46] Stephen J reached the same conclusion, saying at 539:

> "An individual does not suffer such damage as gives rise to standing to sue merely because he voices a particular concern and regards the actions of another as injurious to the object of that concern. That it is a body corporate rather than an individual which seeks to do so cannot of itself alter that position; the fact that that body corporate has as its main object the voicing, and encouragement in the community, of just such a concern no doubt ensures that what it does to give effect to such an object will not be ultra vires; it will not otherwise improve its position."

[47] Mason J expressed agreement with the reasons of Gibbs J (at 547). Acknowledging the broad range of interests which may serve to support standing, Mason J said, at 548:

> "In this difficult field there is one proposition which may be stated with certainty. It is that a mere belief or concern, however genuine, does not in itself constitute a sufficient locus standi in a case of the kind now under consideration."[32]

[48] The following year, in *Onus v Alcoa* (1981) 149 CLR 27, these rules of standing were applied to find that Ms Onus and Mr Frankland, who claimed to be descendants of the Gournditch-jmara people, who had occupied a particular area in "prehistoric times" and who, according to their laws and customs, were custodians of relics on the land, had shown the requisite special interest to bring proceedings against Alcoa seeking to prevent

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[32] Cf Murphy J (in dissent) at 557.

it from carrying out works on the land which would interfere with the relics, in breach of the *Archaeological and Aboriginal Relics Preservation Act* 1972.

[49] In *Onus v Alcoa* Brennan J (as his Honour then was) said, at 74-76:

> "Not every affection of a plaintiff's interests suffices to confer standing upon him. A plaintiff does not acquire standing to sue for relief merely by proclaiming before he sues that he has an interest in obtaining relief…. Nor is a plaintiff regarded as having a special interest in the subject matter of an action 'unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest'… A litigant's interest in obtaining the relief claimed is not by itself the interest which gives standing to sue; standing to sue is not established by suing...
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> A plaintiff must show that he has been specially affected, that is, in comparison with the public at large he has been affected to a substantially greater degree or in a significantly different manner. It is not necessary to show that the plaintiff is uniquely affected; there may be some others whose interests may be affected in like manner…
>
> Whether a plaintiff has shown a sufficient interest in a particular case must be a question of degree, but not a question of discretion… It is material to consider whether the plaintiff's interest in the action is sufficient to assure that 'concrete adverseness which sharpens the presentation of issues' falling for determination… It is also material to consider whether the plaintiff has shown so distinctive an interest that his action to enforce the defendant's public duty is likely to avoid a multiplicity of actions… At least the plaintiff must be able to show that success in the action would confer on him – albeit as a member of a class – a benefit or advantage greater than the benefit or advantage thereby conferred upon the ordinary member of the community; or alternatively that success in the action would relieve him of a detriment or disadvantage to which he would otherwise have been subject – albeit as a member of a class – to an extent greater than the ordinary member of the community."[33]

[50] Stephen J in *Onus v Alcoa* (at 42) referred to the need for "a curial assessment of the importance of the concern which a plaintiff has with particular subject matter and of the closeness of that plaintiff's relationship to that subject matter".

[51] In *Bridgetown/Greenbushes Friends of the Forest Inc v Executive Director of the Department of Conservation and Land Management* (1997) 18 WAR 126 at 134 Murray J articulated this "closeness" in the following way:

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[33] References omitted.

> "In conservation cases such as these are, it seems to me to be difficult to do more as a matter of law than to hold that the test of standing would involve the search for that special proximity of interest which associates the plaintiff with the particular subject matter of the dispute in respect of which the litigant seeks curial intervention. A special interest must have a degree of closeness or substance which is of a kind and degree sufficient to distinguish it from the general interest of the public at large and what may be described as a particular interest which is no more than a general intellectual or emotional concern for the environment generally or the particular environment which is the subject of the litigation."

[52] This should be read by reference to the following observations of French CJ and Keane J in *Argos Pty Ltd v Corbell* at [37]-[39]:

> "In the application of [the equivalent of s 7 of the JR Act], judgments of fact and degree may be required. That is not unusual where the issue of standing is contested.
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> In *McHattan v Collector of Customs* [(1977) 18 ALR 154 at 157], Brennan J said:
>
> > 'a decision which affects the interests of one person directly may affect the interests of others indirectly. Across the pool of sundry interests, the ripples of affection may widely extend. The problem which is inherent in the language of the statute is the determination of the point beyond which the affection of interests by a decision should be regarded as too remote.'
>
> The judgments of fact and degree required to resolve the 'problem … inherent in the language of the statute' may conveniently be expressed in terms of directness or remoteness or proximity. But these terms are expressions of conclusionary judgments; their use does not indicate the deployment of tools of analysis."

[53] Since *Australian Conservation Foundation v The Commonwealth*, there have been decisions in which, on the application of the principles articulated in that case, environmental groups, including the ACF, have been found to have the requisite standing. In this, as in other areas of the law, there are frequent reminders in the cases of the need to consider each case on its own facts, and the inherent perils of a factual comparison with previous authorities. Nevertheless, consideration of the factual context of some of the previous cases in which this issue has arisen is helpful in reaching a determination in this case.

[54] One example is *Australian Conservation Foundation v Minister for Resources* (1989) 19 ALD 70, in which Davies J found that the ACF did have the requisite "special interest"

to show it was a person aggrieved for the purposes of an application to review a decision to grant a licence to export woodchips obtained by logging of the Coolangubra and Tantawangalo State Forests, which are part of the South East Forests and part of the National Estate under s 31 of the *Australian Heritage Commission Act* 1975 (Cth). Davies J described the evidence in that case as showing that "the ACF is the major national conservation organisation in Australia", "established with a view, inter alia, to reconciling the use and exploitation of resources with the conservation of the natural environment". The ACF received substantial annual funding from both Commonwealth and State governments. Davies J said "[i]t has established a national organisation and is uniquely involved with governments and other organisations in achieving a proper balance between environmental protection and economic development" (at 73). There was evidence of the role played by the ACF in the protection of the National Estate generally, and the South East forests in particular. At 74 Davies J said:

> "While the ACF does not have standing to challenge any decision which might affect the environment, the evidence thus establishes that the ACF has a special interest in relation to the South East forests and certainly in those areas of the South East forests that are National Estate. The ACF is not just a busybody in this area. It was established and functions with governmental financial support to concern itself with such an issue. It is pre-eminently the body concerned with that issue. If the ACF does not have a special interest in the South East forests, there is no reason for its existence."[34]

[55] Another example is *North Coast Environment Council Inc v Minister for Resources* (1994) 55 FCR 492 in which Sackville J held that North Coast was a person aggrieved by the decision of the Minister to grant a licence to a company to export woodchips obtained from sawmill and logging activities in an area on the north coast of New South Wales. Sackville J set out five principles established by the High Court's decision in *Australian Conservation Foundation v The Commonwealth* (at 512) before going on to say:

> "It follows that, in order to show a special interest in the subject matter of the litigation, North Coast cannot rely solely on its objects, its role as commentator in Sawmillers' EIS or any complaint made by it about possible non-compliance with the statutory procedures. North Coast's case is not, however, confined to these matters. It points to other factors demonstrating (in the language of Stephen J in *Onus v Alcoa*) the importance of its concern with the subject matter of the decision and the closeness of its relationship to that subject matter."

[56] The "most significant" of these other factors, in Sackville J's view, were:

(a) North Coast was the peak environmental organisation in the north coast region of New South Wales. Its activities related to the areas affected by the operations

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[34] Underlining added.

generating the woodchips the subject of the export licence granted to Sawmillers. His Honour observed that, on the evidence, there was no other conservation body with a greater interest or commitment to the issue raised by the grant of export licences to Sawmillers (at 514).

(b) North Coast had been recognised by the Commonwealth since 1977 as a significant and responsible environmental organisation, including in the form of regular financial grants.

(c) North Coast had also been recognised by the New South Wales government as a body that should represent environmental concerns on advisory committees, including the Forestry Policy Advisory Committee, the role of which is to advise the State Minister on forestry matters, including the management of State forests.

(d) North Coast had conducted or co-ordinated projects and conferences on matters of environmental concern, for which it had received significant Commonwealth funding.

(e) Independently of North Coast's long involvement with successive licences granted to Sawmillers, it had made submissions on forestry management issues in the past.[35]

[57] Sackville J accepted that North Coast did not have the same characteristics as ACF was shown to have in *Australian Conservation Foundation v Minister for Resources* (including that the latter was described by Davies J as being "pre-eminently the body concerned with" South East forests that are National Estate, its position as a national body, its considerably greater funding and support by the government, including for projects specifically concerning forestry) – and observed that "the differences show that the present case is closer to the line where a special interest in the subject matter of the action ends" (at 513). Nevertheless, his Honour considered North Coast had shown enough to demonstrate it was a person aggrieved.[36]

[58] On the other hand, in *Central Queensland Speleological Society Incorporated v Central Queensland Cement Pty Ltd (No 1)* [1989] 2 Qd R 512, a majority of the Full Court (Derrington J and de Jersey J, as his Honour then was; Thomas J forming a different view) held that the Society did not have standing to seek an injunction restraining the company from carrying out proposed activities in the exercise of its mining rights in and around a cave, known as Speaking Tube Cave, on the basis that the activities threatened to destroy or damage the cave. The objects of the Society included the encouragement of cave conservation and the exploration and documentation of caves. It had an interest in the conservation of caves, and the wildlife inhabiting them, including bats. It was particularly concerned with the welfare of ghost bats, which are unique to Australia, and Speaking

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35 At 512-513.

36 See also Sackville J's decision in *Tasmanian Conservation Trust Inc v Minister for Resources* (1995) 55 FCR 516 at 552-553, where similar factors were taken into account in concluding that the Trust was a person aggrieved, with the Trust being described by Sackville J as being "closer to the Australian Conservation Foundation's position than was the North Coast Environment Council".

Tube Cave as a roosting place for the ghost bat. It had, over an extended period, conducted tours of caves on the relevant land, when it was the subject of a former mining lease held by the company (although had later been prevented from entering). The Society had charged a fee for its tours, and sold merchandise.[37] Although Thomas J described the nexus of the Society's interest to the proceedings as "slender", he was not prepared to find the Society did not have standing, at the interlocutory stage.[38] The other members of the Court were prepared to do so: Derrington J said the Society had shown no greater non-pecuniary interest than that shown by the ACF in the High Court's decision "and indeed it might be said to be far less powerful in the quality of that claim" (at 532); and de Jersey J said the Society's interest "barely surpasses the 'mere intellectual or emotional concern' which Gibbs CJ held to be insufficient in *Australian Conservation Foundation v The Commonwealth*" (at 534).

[59] Moving forward to 2000, the reasoning of Davies J and Sackville J in the two cases referred to above was adopted by Chesterman J in *North Queensland Conservation Council Inc v Executive Director, Qld Parks & Wildlife Service* [2000] QSC 172 to find that NQCC had a sufficient special interest in a decision of the respondent granting a permit to allow the State to develop a harbour and associated works at Nelly Bay on Magnetic Island, to be a "person aggrieved". The position of NQCC was said to be "broadly similar" to that of North Coast, including in terms of government recognition through funding and representation on government forums, active involvement in a diverse range of environmental issues including marine issues, and intimate involvement in environmental issues surrounding the Nelly Bay development (see at [31], [32] and [33]).

[60] In this case, Chesterman J observed, of the "conventional approach to determine whether a party has standing", which is to consider whether the party has a special interest in the particular subject matter, that it is a criterion "vague in content and uncertain of application", providing "little practical assistance in determining the sufficiency, or even the existence, of a special interest in a particular case" (at [11]). His Honour suggested there was another approach that could be taken, described at [12] as follows:

> "The plaintiff should have standing if it can be seen that his connection with the subject matter of the suit is such that it is not an abuse of process. If the plaintiff is not motivated by malice, is not a busy body or crank and the action will not put another citizen to great cost or inconvenience his standing should be sufficient. The difference in approach is that the former looks to the plaintiff's interest in bringing the suit. The latter looks to the effect of the proceedings on the defendant. One is, in a sense, the obverse of the other. If a plaintiff's interest is insufficient the proceedings will be abusive. It is, however, probably easier to identify a proceeding which is an abuse of process than to recognise a 'special interest'. The distinction which must be

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[37] See at 523 per Thomas J and at 534 per de Jersey J.
[38] See at 525.

> drawn is between those who seek to prevent an abuse of process and those who seek to abuse the process itself."

[61] On that approach, also, Chesterman J was satisfied the NQCC had standing, observing at [36] that "NQCC's purpose is genuinely to test the legal propriety of the permit as part of its commitment to the protection of the natural environment" and there would be no particular inconvenience or hardship in the respondent being required to prove that the decision to grant the permit was lawful (at [37]). It was also regarded as a "point of significance" that "if NQCC does not have standing to test the validity of the permit no one else will have, and the decision which may be quite unlawful, will go uncorrected" (at [35]).

[62] A similar approach was taken by Dutney J in *Save Bell Park Group v Kennedy* [2002] QSC 174, following Chesterman J's decision.

[63] However, in contrast, in *Save the Ridge Inc v Australian Capital Territory* (2004) 133 LGERA 188 at [18] Crispin J said that:

> "As tempting as the approach suggested by Chesterman J may be, I must say, with respect, that it appears to go far beyond that adopted in any of the earlier authorities. I am unable to accept that a person may demonstrate a 'special interest' in the subject matter of a dispute sufficient to provide *locus standi* merely by establishing that the intervention has not been motivated by malice, that he or she could not fairly be described as a busy body or crank and that the action would not put another citizen to great cost or inconvenience. In my opinion, neither a noble purpose nor an admirable character and temperament will be sufficient to constitute a special interest. Similarly, I am unable to accept that a special interest can be established by demonstrating that his or her intervention is unlikely to cause others significant expense."

[64] Nevertheless, Crispin J said he accepted that in recent years a more liberal approach had been taken to the question of standing. His Honour was satisfied the applicant in that case had demonstrated a special interest in the proceedings, such that it had standing to bring proceedings for an injunction to restrain an alleged threatened breach of the relevant Planning and Environment Act by certain work on an area of land known as O'Connor Ridge. Crispin J was satisfied of the applicant's "special interest" on the basis of evidence establishing that the applicant association had, since its incorporation in 1999, engaged in a series of activities directed towards ensuring protection of the environment in the vicinity of O'Connor Ridge; is a member organisation of the Conservation Council of Canberra and the South East Region, the umbrella body of conservation organisations in the ACT; it has been one of the main bodies concerned with the conservation of the natural environment of, inter alia, the O'Connor Ridge; had participated in a large number of community consultation committees and community consultation exercises conducted by government agencies; its views had been sought by agencies of the ACT government and sometimes by Ministers (at [20]).

[65] I respectfully agree with the observations of Crispin J about the alternative approach suggested by Chesterman J; but note that neither party in this case sought to argue that that alternative approach represented a binding shift in terms of the principles to be applied, which were accepted to be those enunciated in *Australian Conservation Foundation v The Commonwealth*, and recently affirmed in *Argos v Corbell*.

[66] Another Queensland case in which this issue was considered is *Alliance to Save Hinchinbrook Inc v Cook* [2007] 1 Qd R 102. The Alliance sought judicial review of a decision to issue a marine parks permit for the construction of breakwaters in the Hinchinbrook Channel at Cardwell. Jones J noted that the Alliance had, since its incorporation, actively campaigned to protect the environment of the Hinchinbrook area of the marine park; is the peak organisation to raise concerns in this area; and has contributed significantly to public debate on issues relating to the environment in this area, including by making submissions on the management plans for the Hinchinbrook Island National Park. The Alliance, and individual persons associated with it, had made submissions to the decision-maker (as contemplated by the legislation) (at [17] and [18]).

[67] Jones J also noted that the *Marine Parks Act* had since been amended to provide expressly that an individual is taken to be a person aggrieved in relation to a decision under the legislation if they had, any time in the two years before the decision, engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment (at [19]). Although that did not apply to the decision Jones J was concerned with, his Honour took the view that the new enactment was an affirmation of the fact that a person genuinely engaged in activities of the kind mentioned ought to be seen as a "person aggrieved" for the purposes of that statute.

[68] Jones J observed that "[t]he fact that a particular group of individuals or an unincorporated association takes up a cause does not mean there will automatically be standing", "much depends on the circumstances of the case" (at [16]). In the circumstances of that case, Jones J concluded at [21] that:

> "The history of the applicant's activities, the extensive nature of the submissions made by the applicant and its members and its recognition as a peak organisation, persuades me that the applicant does have standing to bring these proceedings. The applicant's involvement in this specific project goes beyond a 'mere emotional or intellectual concern'. It is the appropriate organisation to ensure the accountability of the decision-maker."

[69] *Minister Administering the Mineral Resources Development Act 1995 v Tarkine National Coalition Inc* (2016) 24 Tas R 357 is another example of a case where an environmental body was able to demonstrate the requisite "special interest" in the subject matter of decisions sought to be reviewed. The decisions were the granting of applications for mining leases in an area known as the Tarkine. The Tarkine National Coalition Inc is an incorporated associated dedicated to the conservation and management of the Tarkine and its forests – it was described by Wood J at first instance as the only organisation solely

dedicated to the protection of the values of the Tarkine.[39] It does not appear to have been particularly controversial that it was a person aggrieved. Wood J at first instance said, at [44]:

> "The nature of the interest of the applicant, and its proximity to the decision made, is not contentious. There is ample evidence that the applicant qualifies as a person aggrieved. It possesses an interest greater than any ordinary member of the public. Its interest in the Tarkine is long-standing and has not been generated by the present proceedings. The applicant's reason for existing is to protect the natural values of the Tarkine. As I have mentioned, its objectives include achieving World Heritage status and National Park status for the Tarkine. It has engaged in activities that demonstrate its commitment to conservation and protection of the natural values of the Tarkine. The mining operations will affect its objectives. The operations are large in scale and the natural environment within the lease areas will be substantive. Both mining leases fall within the boundaries of the proposed National Park. Clearly, the decisions authorising mining in the Tarkine adversely affect the applicant's interests."

[70] Wood J's decision was upheld on appeal. The issue on the appeal was not whether the applicant's interests would be affected by a decision the immediate result of which would be the commencement of open cut mining operations on the land in question. Rather, the Minister was contending that the applicant's interests were not affected by the decision to grant the mining leases, because mining operations could not be started until other planning and environmental permits and approvals were obtained. That point was determined unfavourably to the Minister, both by Wood J at first instance, and by the Full Court. Estcourt J (with whom Blow CJ and Brett J agreed) expressed agreement with Wood J's reasoning that on a plain interpretation a person's interests could be said to be adversely affected by a decision "if it opens the way for an outcome which will have a detrimental impact" (at [49]).[40]

Discussion

[71] Although it may be accepted that there has, since *Australian Conservation Foundation v The Commonwealth*, been some liberalisation, not always consistently, in terms of the application of the principles of standing,[41] there is no subsequent decision of the High Court which alters the principles. The requirement for an applicant to identify an interest,

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[39] *Tarkine National Coalition Inc v Minister Administering the Mineral Resources Development Act 1995* (2016) 214 LGERA 327 at [4].

[40] Referring also to *H A Bachrach Pty Ltd v Minister for Housing* (1994) 85 LGERA 134.

[41] See, for example, *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 56 FCR 50 at 65 per Lockhart J; cf *Onesteel Manufacturing Pty Ltd v Whyalla Red Dust Action Group Inc* (2006) 94 SASR 357.

beyond that of an ordinary member of the public, which is affected in a practical way by the decision was affirmed in *Argos v Corbell.*[42]

[72] Applying those principles to the present case, Lock the Gate has not, on the evidence before the court, shown that it has a special interest in the subject-matter of the decision to give indicative approval for the proposed transfer of the mining lease in respect of the Blair Athol mine, above that of an ordinary member of the community, such that its interests could be said to be affected in a practical way by the decision.

[73] The objects of Lock the Gate do not support a conclusion that it has such an interest.[43] Nor do the various activities that it has undertaken, in relation to the Blair Athol mine, since Ms Flint became aware of the proposed transfer in a media report in February 2016. The effect of the evidence is that, having become aware of that, and it seems a view formed by Ms Flint as to the financial viability of the proposed transferee company, Lock the Gate "developed concern that the rehabilitation obligations of the Blair Athol Mine would not be carried out and that the Queensland taxpayer would be at risk of having to pay for any outstanding rehabilitation". Following this, Lock the Gate has taken it upon itself to do various things, including producing a report on the mine (in May 2016), organising a public meeting (in June 2016), attending a meeting with the Director for Coal Mining Operations and the Coal Assessment Manager, at the DNRM, to discuss Lock the Gate's concerns (in June 2016), and arranging to meet with the Environment Minister to discuss its concerns (in July 2016), conducting a review of the mine's "financial assurance calculation" (in July 2016) and meeting with the Deputy Directors General of DNRM and DEHP in relation to the proposed transfer of the mining lease (in September 2016).

[74] These activities, undertaken since February 2016, do not support a conclusion that Lock the Gate has a special interest in, or a close connection with, the Blair Athol mine, such that it could, objectively,[44] be said to be aggrieved by a decision concerning the proposed transfer of the mining lease. As Gibbs J said in *Australian Conservation Foundation v The Commonwealth,* "[a] person who is concerned enough about proposed action to furnish his comments on it does not necessarily have any interest in the proposed action in the relevant sense" (at 531). And as Brennan J said in *Onus v Alcoa*, "[a] plaintiff does not acquire standing to sue for relief merely by proclaiming before he sues that he has an interest in obtaining relief"; "[a] litigant's interest in obtaining the relief claimed is not by itself the interest which gives standing to sue" (at 74).

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[42] See also the decision of the Full Court of the Federal Court in *Assarpin v Australian Community Pharmacy Authority* (2016) 239 FCR 161 at [50], per Bromberg, Rangiah and Perry J, endorsing the reasons of Lockhart J in *Right to Life Association (NSW) v Secretary, Department of Human Services and Health* (1995) 56 FCR 50 at 65-66, which includes the statement that "In order that an applicant may show that he is a person 'aggrieved', the element of 'grievance' must be special to the applicant. He must suffer more greatly or in a different way than other members of the community".

[43] See *Australian Conservation Foundation v The Commonwealth* at 531 per Gibbs J and at 539 per Stephen J (passages referred to at paragraphs [45] and [46] above).

[44] See also *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 56 FCR 50 at 80 per Beaumont J; and *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council* (2007) 162 FCR 313 at [41].

[75] On the evidence, Lock the Gate has not shown that it is specially affected by the decision to give indicative approval, in comparison with the public at large. On the contrary, the interest identified by Lock the Gate is the public interest – both in terms of the risk that the public might have to pay the costs of rehabilitating the land, if the incoming transferee cannot, and the risk of environmental harm in the event that the site is not rehabilitated at all.

[76] Lock the Gate has not shown that its involvement in judicial review of the decision would confer on it a benefit or advantage, or relieve it of a detriment or disadvantage, to an extent greater than the ordinary member of the community. In this regard, the following observations of Lockhart J, in the *Right to Life* case[45] (at 69) are apt:

> "The grievance of the appellant does not travel beyond that which any person has as an ordinary member of the public. Here there is only an intellectual, philosophical and emotional concern. The appellant is not affected in any way to an extent greater than the public generally. There is no advantage likely to be gained by the appellant if successful in the proceeding nor disadvantage likely to be suffered if it fails. The most that it can achieve is the satisfaction of correcting a wrong decision if it should succeed and winning a contest which may improve its position in persuading the public and politicians of the correctness of its cause."

[77] Lock the Gate's broader concern, and activities, in relation to the issue of mine rehabilitation do not support a different conclusion. Nor does the evidence of what is described as recognition by the government. Acknowledging that there are differing views as to the significance of this,[46] what is relied on in this case is, with respect, the barest recognition of the existence of the organisation, as opposed to the kind of recognition referred to in the cases discussed above, often accompanied by funding, of a body as the peak organisation representing a particular public interest in a particular subject matter or environment.

[78] There is not in this case evidence of Lock the Gate being acknowledged as the peak environmental organisation in a particular area or region; nor of the kind of governmental recognition referred to in the cases; nor of a special interest in the preservation of a particular environment.[47]

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[45] In which the Right to Life Association (an incorporated body, having the objects described by Lockhart J at 67) sought to review a decision to permit certain medical institutions to import and conduct clinical trials of a drug purporting to produce abortion. The Association had been proactive, prior to the decision being made, in writing to the decision-maker; and in fact the "decision" sought to be reviewed was a decision made by the Secretary of the Department, in response to a request from the Association that the Secretary exercise his authority to direct that the clinical trials cease (see at 57 and 60-63 per Lockhart J, at 80 per Beaumont J and at 88 per Gummow J).

[46] See, for example, *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 56 FCR 50 at 67 per Lockhart J; see also *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council* (2007) 162 FCR 313 at [63].

[47] Cf *Australian Conservation Foundation v The Commonwealth* at 530 per Gibbs J (acknowledging that a person might have a special interest in the preservation of a particular environment); *Australian Conservation*

[79] Lock the Gate relies upon the comment made by Chesterman J in *North Queensland Conservation Council Inc v Executive Director, Qld Parks & Wildlife Service* [2000] QSC 172 at [35],[48] to submit that if it does not have standing, no one else will, meaning a decision which may be unlawful may go uncorrected.[49] It may be noted that Chesterman J's observation to that effect followed his Honour's finding that NQCC did have standing, on the application of the (conventional) principles (at [32]-[33]) as well as on the basis of his Honour's alternative approach (at [34]-[35]). The question whether there is anyone else with standing is not a substitute for the application of the principles established by the High Court, and explained and applied in subsequent cases. On the application of those principles, Lock the Gate has not shown that it is a person aggrieved by the indicative approval decision. Whether or not there may be other person(s) who could establish they are aggrieved by the decision does not alter that conclusion.

[80] Finally, I turn to the first of the respondent's arguments – that Lock the Gate's interests, even if sufficient to give it standing, are not adversely affected by the decision to give indicative approval. There is an attraction to this argument, in so far as Lock the Gate is concerned, because it is correct to say that there is no legal or practical effect of the decision to give indicative approval, other than on the parties to the proposed transaction. The concerns raised by Lock the Gate could only potentially arise if an actual application for approval is made, and granted; and, further, if the fears about the incoming transferee's financial viability are realised. Although the application for approval of the transfer was made, the focus of this proceeding is the earlier decision, to give indicative approval.

[81] In answer to this argument, Lock the Gate relies upon *H A Bachrach Pty Ltd v Minister for Housing* (1994) 85 LGERA 134 in which Kiefel J (as her Honour then was) said she did not consider that the standing provisions of the JR Act required an applicant to show an immediate adverse effect, or that a decision be the final link in a chain of causative events (at 137). This case concerned a decision to amend a strategic plan under a planning scheme, to provide for an additional regional shopping centre. The applicant was the owner of an existing shopping centre. Kiefel J said she did not have difficulty accepting that it is possible the development of another regional centre might result in the loss of some custom to the applicant, the loss of some tenants or affect the value of its centre, although evidence would be necessary should the matter proceed to final hearing. The Minister argued the decision to amend the strategic plan was contingent, since it only brought the strategic plan into operation, and did not itself affect the approval of the development. Kiefel J rejected that argument, saying that if the decision "has potential for such damage, a person's interests are exposed to peril, and are adversely affected".

Foundation v Minister for Resources (1989) 19 ALD 70 at 73-74; *North Coast Environment Council Inc v Minister for Resources* (1994) 55 FCR 492 at 512-513; *North Queensland Conservation Council Inc v Executive Director, Qld Parks & Wildlife Service* [2000] QSC 172 at [31]-[33]; *Save the Ridge Inc v Australian Capital Territory* (2004) 133 LGERA 188 at [20]; *Tarkine National Coalition Inc v Minister Administering the Mineral Resources Development Act 1995* (2016) 214 LGERA 327 at [44] per Wood J.

[48] See paragraph [61] above.

[49] Reply submissions at [32].

[82] More recently, in *Argos v Corbell*, in the context of considering standing to review a decision to approve a proposal for a new commercial development, there was a distinction drawn between the interests of the operators of two supermarkets nearby, whom it was accepted were likely to suffer a loss in profitability as a result of the implementation of the proposed development; and the interests of the landlord of one of them, who contended its interests were affected because the operator's business might fail, and as a result the landlord might lose the benefit of the lease. The majority of the High Court held that the operators were persons aggrieved; but the landlord was not, since the claimed effect on its interest was more indirect and remote.[50]

[83] On that analysis, in my view Lock the Gate's interests are not affected by the decision to give indicative approval for the transfer of the mining lease, such as to confer standing on it, because of the indirect, remote and hypothetical affect contended for – namely, that the public interest, in ensuring the costs of rehabilitation are met by the mining company, and in ensuring that rehabilitation does occur, is potentially in peril because, if an application for transfer is made, the proposed incoming transferee might not have the financial resources to meet its obligations to do so, and consequently the cost might fall to the taxpayer, or the rehabilitation might not occur at all.

[84] But even if, adopting the authority of *Bachrach*, it was right to conclude that the decision to give an indicative approval is capable of affecting the interests of a body such as Lock the Gate, for the reasons already articulated, I am not persuaded that its identified interests are such as can be said to be adversely affected by that decision, to give it standing to apply for judicial review of the decision.

[85] It follows that I find that Lock the Gate is not entitled to request a statement of reasons for the decision.

[86] The application is dismissed. I will hear the parties as to costs.

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[50] *Argos Pty Ltd v Corbell* (2014) 254 CLR 394 at [29], [36], [46] and [49] per French CJ and Keane J, and at [54], [62]-[63] and [75] per Hayne and Bell JJ; cf at [91] per Gageler J.