Digging Deep: dealing with social aspects of environmental harm & pubic interest issues of mining in Queensland

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Introduction

In the bottom right hand corner of the Queensland Coat of Arms, there is a stylised picture of a mine. I mention this to remind us all that mining is, and has always been seen as one of four pillars of Queensland society and its economic prosperity. Any discussion of the mining industry in Queensland must acknowledge that deep and longstanding connection. That is one reason why this paper has to dig deep.

And while you can't pick up a newspaper (or click on a news site) these days without some reference to climate change and coal, mining in Queensland is diverse. So this paper may have to dig deep in different parts of Queensland, and for different resources, to appreciate all the issues and all the perspectives.

The decisions of the Land Court are not flimsy documents. To quote Stephen Fry's Mr Mybug in *Cold Comfort Farm:* Let me warn you: I'm a queer, moody brute, but there's rich soil in here if you care to dig for it.

I am going to look at the topic by reference to s 269(4)(k) of the *Mineral Resources Act* and s 191(g) of the *Environmental Protection Act* (EPA) and from two historical perspectives. The first is to look at a timeline of decisions from 1975 to the present. The second is to take well-known, landmark mines – Xstrata, Hancock Galilee and New Acland – and look at the way their applications have developed through the Courts.

So, shoulder your shovel and come with me on a journey through the decisions of the Land and Resources Tribunal and the Land Court to find out what they really say, what they don't say, and what guidance they give for the future.

Setting out the route

The Land Court hears objections to grants of mining leases under the *Mineral Resources Act 1989* (Qld) (MRA), and applications or amendment applications for Environmental Authorities (EA) issued for mining projects under the *Environmental protection Act 1994* (Qld) (EPA).[2]

Any person can object to an application for a mining project or EA during the public notification process.[3] Objections must be in accordance with legislative requirements.[4]

The role of the Court in mining objections hearings is administrative, in that the Court is not the final decision maker. Pursuant to section 269 of the MRA, the Court makes recommendations to the Minister of Chief Executive who are the final decision makers. The Court must afford natural justice when hearing objections and it must independently assess the evidence.[5]

The Court's power extends to recommending that a mining lease or EA:

a) Not be granted;

b) Be granted with changes to conditions; or,

c) Be granted without any changes.[6]

The Chief Executive for the Department of Environment and Science has the final authority for granting EA applications, and the Minister for the Department of Natural Resources, Mines and Energy determines lease applications. Both decision makers must have regard to the Court's decision, although they can elect not to follow the recommendation of the Court.[7] Research conducted to date indicates only one example of a Minister not following the recommendation of the Land Court.[8]

The MRA (section 269(4)(k)) directs the Land Court to consider the public right and interest in determining whether a recommendation for a mining lease, in whole or in part, should be made to the Minister.[9]

Section 191(g) of the EPA states that, in making an objection decision, the Land Court must consider the standard criteria. The 'standard criteria' has an extensive definition in Schedule 4, including the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and the public interest.

K'gari

It's 1974. Blue skies, blinding white beaches, pristine forest. The Mining Warden at Maryborough has just recommended the approval of two sand mining leases over Fraser Island – K'gari. The concept of 'public interest' is about to be raised and tested.

John Sinclair and the Fraser Island Defence Organisation (FIDO) objected to the grant of the leases.

> 'The evidence given in support of the objection was very extensive, given by persons who appeared to be well-qualified in respect to the opinions they expressed, and was directed to the damage to the environment likely to be done by mining, the irreversible nature of that damage and the desirability of maintaining the terrain and its vegetative cover in its virgin state… [it was] quite obviously, directed to the public interest in the conservation of the area.[10]

The Mining Warden recommended approval of the applications even though '… the evidence which, being unanswered by the applicant presented a strong case for care in the use to which the land would be put.'[11]

A central part of Mr Sinclair's objection was the issue of public interest. The Mining Warden decided that Mr Sinclair and FIDO was a section of the public and did not represent the public interest as a whole. He was 'unable to conclude … that the interests of the public as a whole would be prejudicially affected by the granting of the leases.'[12]

The Full Court of the Supreme Court of Queensland confirmed the Mining Warden's decision. Lucas J found that there was no difference between 'public interest' and 'public interest as a whole'[13]. Kelly J found that, when the Mining Warden is considering pubic interest it is the interest of the community generally, that is, the interest of the State as a whole.[14]

The Full Court found that the Mining Warden applied the correct test for public interest, notwithstanding real concerns that the applicant had not established fundamental prerequisites such as mineralisation, whether the size of the proposed lease was appropriate or whether the proposal was economically viable. As Lucas J noted:

> It is notorious that there has been widely expressed alarm as to the possible effect of mining for sand upon the natural vegetation and characteristics of the countryside, and I think it is right to say that the Court in this case is in no way concerned with the question of the desirability of permitting such mining in general, or with the correctness of the warden's present decision in particular. What is before the Court is a pure question of law;[15]

Isn't that interesting? A section of the community has voiced real concerns about a substantial risk to the environment but the public interest test is satisfied. To add further insult to injury, the Court dismissed the significant difficulties with the applicant's evidence:

> A warden can only act on the evidence which is put before him, and in my opinion the absence of evidence, or further evidence, for there was some, on the matters mentioned did not place the warden in the position in which he was unable to make a recommendation.[16]

That K'gari is a world heritage listed island today is thanks to the High Court. It found that the matters Mr Sinclair raised were matters of general public interest and the Mining Warden did not consider them because the limited group which constituted FIDO was not, in his view, the public interest.[17] Barwick CJ found that:

> …irrespective of the interests of the objectors or their number and, indeed, irrespective of the existence of an objection on that ground [the Mining Warden] was bound to consider whether the granting of the application would prejudicially affect public interest.[18]

Those findings alone may not have saved K'gari. Stephens J undertook the analysis that the Mining Warden did not:

> …then ensued lengthy evidence by a number of witnesses called on behalf of the appellant in support of his objections, evidence which the respondent had chosen not to challenge and which the warden described in the course of his decision as evidence which, being "unanswered by the applicant presented a strong case for care in the use to which the land in this area is put". It included expert evidence of ecological jeopardy threatened by sand mining, of the unique character of Fraser Island, its very special potential as a national park and wilderness area, the economic value of its use for those purposes and the unfavorable economic aspects involved in sand mining on the island.
>
> What is more, as I have already said, the warden himself described it or some of it, as unanswered and as presenting in at least one respect a strong case. Even had there been evidence of worthwhile mineralization within each of the lease areas it is perhaps difficult in these circumstances to see how any proper approach to the question of public interest could lead to a recommendation favourable to the respondent. When viewed in light of the evidence of the respondent's own witness that two of the leases sought contained within them no areas of worthwhile mineralization it is apparent that in some way the warden's task has miscarried…[19]

Jacobs J gave guidance about the scope of public interest:

> The public interest is an indivisible concept. The interest of a section of the public interest is a public interest but the smallness of the section may affect the quantity or weight of the public interest so that it is outweighed by the public interest in having the mining operation proceed. It does not however affect the quality of that interest.
>
> The words 'public interest' are so wide that they comprehend the whole field of objection other than objection founded on deficiencies in the application and in the required marking out of the land applied for.[20]

The relevant and importance of public interest in assessing an application for a mining lease is established.

Let's go fossicking!

You either love fossicking or hate it. Sifting through tons of dirt, looking for that one speck of colour can be either therapeutic or mind-numbing.

Sorting through the LRT and Land Court decisions from 2000 to 2012 is a bit like fossicking. Because the LRT made recommendations on all applications for mining leases, whether or not there were objections, many decisions were done 'on the papers', so, generally, they adhered to a formula.

If the decisions referred to public interest at all, it was only a paragraph or two. Some Members, including the then President, only referred to public interest if the application involved matters of public infrastructure; if a road or a power line needed moving.

Initially, Member Smith's decisions included three or four paragraphs referring to public roads and infrastructure, flora and fauna, and native title and heritage. But, by 2011, not even Member Smith spent much effort discussing the merits of public interest. If no objection was raised by a party, often section 269(4)(k), then the concept of public interest was not mentioned at all.

A disinterested fossicker might be tempted to give up the hunt and retire for a cup of tea. But persistence pays off:

- Public interest was relevant when the LRT considered the impact of mining on the township of Yangan and the Yangan school[21].
- Although no public infrastructure was involved, the LRT in *Re Tara Hills Pty Ltd*[22] thought it important to note the miner's undertaking not to operate ore trucks on local roads during school bus hours.
- The Nebo Shire Council raised unspecified objections about a mine's impact on the physical and social infrastructure in *Re: Coppabella Coal Pty Ltd, QCR No. 2 Pty Ltd, KC Resources Pty Ltd, Mapella Pty Ltd, NS Coal Pty Ltd, Winview Pty Ltd, CPB Coal Pty Ltd & CITIC Australia Coppabella Pty Ltd & Nebo Shire Council*[23], although those objections had been withdrawn by the time of the hearing.
- In *Re A.M. Hicks*[24] the tribunal found that the development of a heritage component, in a tourist mining operation 25 km northwest of Dimbulah, was of value to the public as it enabled interested persons to better understand local mining history.
- In *New Oakleigh Coal Pty Ltd v Hardy & Ors and EPA*[25], the tribunal discussed visual amenity as an aspect of public interest, although finding against the objector as the issue was too subjective.
- Mr Dredge made specific public interest submissions – the safety and amenity of the community – in *Monto Coal 2 Pty Ltd & Ors v Dredge & Ors*[26]. He was concerned about the increased traffic from the mine, the prospect of fuel and explosives being transported on local roads, the adverse impact on seasonal, rural and sedentary qualities of the rural community and the loss of amenity. The tribunal recommended the miner create a community consultation forum before commencing operations.
- Boral Bricks also undertook to participate in a liaison committee and wider committee forum in the Caboolture Shire when it proposed to truck mined clay to Darra through residential streets in Narangba.[27]

No reference to fossicking would be complete without a trip to the gemfields. In *Re P.F. Cronin [No. 2]*[28] the tribunal was concerned that the application before it did not interfere with the power supply to Yowah. In *In re Jason Andrew Barry and Rodney Keith Barrett*[29] residents were concerned that a mining lease would adversely affect the public use of Athens Graves Hill Fossicking Area near Sapphire. The noise and dust

from the mine that might have affected campers in the fossicking area were covered by special conditions. An EA dealing with a timber reserve near Rubyvale was appropriate to protect the public interest in *Re R.A. Bradford and M.J. Elliot*[30]

The Xstrata decisions

LRT 2007

In 2007, Xstrata Coal applied for additional surface area at its Newlands mine. The Queensland Conservation Council (QCC) was an objector and, for the first time since *Sinclair*, there was a serious public interest objection. QCC wanted Xstrata to reduce or offset the greenhouse gas emissions to zero.

Both parties accepted that humans had contributed to climate change. The difference between the two experts called was not significant. They both referred to the Stern Review, a 2006 report commissioned by the British Government which concluded that there would be serious consequences for humanity because of global-warming induced climate change if greenhouse gas emissions were not cut.

Koppenol P rejected the evidence that global warming had a human component. He relied on critiques of the Stern Review by Professors Robert Carter and Sir Ian Byatt that questioned the validity of global warming and climate change science.[31]

He found there was no demonstrated link between greenhouse gas emissions from the mine and any apparent harm caused by global warming and climate change.[32] The President noted that even if the mine reduced its emissions to zero, QCC failed to show that this would have the 'slightest impact on global warming and climate change.'[33]

On the evidence before him, the President was not satisfied the mine would cause any adverse environmental effect that could not be managed by the draft EA, or that the mine would prejudice the public right and interest, or that there was any good reason to refuse the application.[34]

Court of Appeal 2007

QCC appealed to the Court of Appeal. The Court of Appeal overturned the original decision[35] as the tribunal failed to take account of the experts' joint evidence that climate change was caused by human activity, and, the tribunal relied on evidence on which the parties had not been given a proper opportunity to comment.

The Court of Appeal accepted the validity of the climate change science. It noted that the competing expert evidence of Xstrata and QCC did not put in issue whether anthropogenic climate change caused by greenhouse gas emissions was real,[36] it was not suggested that anthropogenic greenhouse gas emissions 'were not a major cause of global warming and climate change…"[37]

The Court of Appeal was also asked to decide whether QCC was required to demonstrate a causal link between Xstrata' greenhouse gas emissions and a discernible environmental impact. It declined to decide the point, instead referring the case back to the LRT for reconsideration, noting only that the tribunal would have to take into account all relevant matters, including s 269(4) of the MRA, when making its decision.[38]

QCC took the matter back to the Land Court. In the meantime, the government had validated the grant of the additional surface area. QCC argued that the grant did not prevent a consideration of the greenhouse gas submission. The Land Court disagreed and refused to hear the submissions.[39]

Land Court 2012

Greenhouse gases and Xstrata were next before the Land Court in 2012[40] in relation to its Wandoan coal mine. The proposed area for the mine contained an estimated 1.2 billion tonnes of thermal coal deposits covering 32,000 hectares.

Greenhouse gas emissions associated with the mine were assessed in the EIS, which produced an inventory for the project. The inventory was based on the *Greenhouse Gas Protocol* which defined direct and indirect emissions through Scopes 1 to 3. Scope 1 emissions are direct greenhouse emissions from sources owned or controlled by the miner. Scope 2 emissions are indirect emissions from the generation of electricity the miner consumes and Scope 3 emissions are all other indirect emissions resulting from the miner's activity but from sources not controlled or owned by the miner. Approximately 99% of the project's emissions were Scope 3 emissions.[41]

The Court concluded that its power to consider adverse environmental impacts under section 269(4)(j) was limited by the inclusion of the words 'caused by those operations' and it was beyond jurisdiction to consider the adverse environmental impacts caused by the production of greenhouse gas emissions by end users.[42]

But Friends of the Earth also submitted that the removal **and use** (my emphasis) of coal prejudices the public right and interest by contributing to the problem of climate change and ocean acidification, which the Court could consider under s 269(4)(k). The miner, by contrast, argued that the concept of public interest should be limited to the State of Queensland.

The Court did not decide whether the concept of public interest was limited to the State of Queensland but it conceded that climate change was a matter of public interest, and a factor that may militate against the recommendation for granting the proposed mining lease.[43]

McDonald P found that, when considering the standard criteria, the Court could only be concerned with the global impacts of the mining activities, not the transportation and burning of coal in power stations[44] and the reference to public interest in the EPA must be read to refer only to the impact of the mining activities on the receiving environment.[45]

The Court considered submissions that the project was in the public interest in light of the financial returns, employment opportunities and regional development that it would generate and the range of conditions and commitments the miner gave which would mitigate or minimise any adverse impact. It found that, in this case, there was a significant economic benefit from the project, and refusing the application would '…not result in any substantial difference in the levels of GHG in the atmosphere'.[46]

Have we been here before? – back out west to Hancock

The 2014 *Hancock*[47] case involved an application for the grant of a mining lease and EA to Hancock Coal for the development of the Alpha Mine located in the Galilee Basin in Central Queensland. The production capacity of the mine was estimated at approximately 30 million tonnes of thermal coal per year over 30 years.[48]

Coast and Country Association of Queensland (CCAQ) objected. It argued that the Court should not follow *Xstrata* because, by narrowly defining mining activities under the EPA, the Court had misconceived the nature of its functions.[49] CCAQ also contended that *Xstrata* did not consider whether section 269(4)(k) independently allows consideration of Scope 3 emissions. [50]

As in *Xstrata*, the Court applied a narrow interpretation to s 269(4)(j) of the MRA, finding that adverse environmental impacts were limited to 'winning and extracting the coal.'[51] Again, 'adverse environmental impact' did not extend to Scope 3 emissions.[52]

The Court did find that Scope 3 emissions were relevant to its consideration of the public interest.[53] It considered the relevance of the 'demand for coal being met from another source' and held that demand would not fall simply because the proposed Alpha mine did not go ahead.[54] The Court found '…that it was the global demand for coal-fired electricity and not the supply of coal from coal mines that was at the heart of the problem.'[55]

Perhaps these findings explain the scant regard otherwise given to s 269(4)(k); the Court recommended rejection of the proposed mine on public interest grounds because the evidence relating to groundwater was unsatisfactory. Unlike in *Xstrata,* the Court did not attempt to look at all factors, nor did it assess the potential public benefits against the groundwater issues.

The 2017 *Hancock*[56] case proposed a mine with an expected output of 30,000,000 tonnes of coal per annum for 30 years.[57] There were two aspects of public interest: the interests of landholders and their rights of access to groundwater, and the environment.[58]

The Court found that the environmental considerations would be addressed by conditions imposed by the draft EA.[59]

The Court assessed the private interests of the objectors against the public interest in developing a resource, and the subsequent advantages the mine would bring to the community at large.[60] The Court found that the disadvantages to the objectors did not outweigh the advantages of the mine. The proposed mine would not unreasonably prejudice the public interest.[61]

That decision was subject to judicial review. Douglas J confirmed that Scope 3 emissions were not relevant but he also confirmed that the Land Court was entitled to look at what would happen if elsewhere in the world if this particular mine does not go ahead when considering the issue of notional harm to the environment.[62]

CCAQ appealed that decision to the Court of Appeal. McMurdo P stated that:

> …in considering objections for an EA, the Land Court should consider Scope 3 emissions because, unlike the MRA, the objects of *Environmental Protection Act* are consistent with a desire to protect Queensland's environment from development, including mining development, which would cause harmful global greenhouse gas emissions. The Land Court in determining the objections was obliged to consider "standard criteria" which incorporate the National Strategy's Core Objectives and Guiding Principles. The terms of these Objectives and Principles are consistent with a concern about harmful global greenhouse gas emissions which would not "enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations"; would not "provide for equity within and between generations"; could damage "biological diversity" and "essential ecological processes and life support systems"; or could raise "threats of serious or irreversible environmental damage.[63]

Fraser JA also contemplated that Scope 3 emissions might be relevant to the public interest under s 269(4)(k) but, given the Land Court's findings of fact, it was not an issue that the Court of Appeal was required to decide.[64]

CCAQ's application for special leave to the High Court was refused.[65]

A detour down a haul road

In 2015 Byerwen[66] applied for six mining leases. Glencore Coal objected. Glencore also had significant mining interests in the area.

Byerwen alleged that Glencore had acted illegally and contrary to the MRA in its use of a haul road.

The Court found that the public interest was best served by Glencore continuing its mining operations and granting the mining leases to Byerwen.[67] However the Court found there was a higher public interest to be considered: that of the public interest in the administration of, and compliance with the MRA:

> If a mining operator of the enormous size of Glencore has in fact been conducting illegal operations under the MRA with a blind-eye turned by departmental officers, what hope can there be in the administration of the MRA in the eyes of the public when it comes to all mining operations conducted under the authority of the MRA? [68]

The Court ordered the Registrar of the Land Court bring the Member's concerns to the attention of the Minister responsible for the MRA[69] and drafted special conditions designed to end the alleged illegal behaviour.

Let's not forget Adani

The 2015 *Adani*[70] case involved the application for grant of a mining lease for the Carmichael Mine in the Galilee Basin in Central Queensland. The application originally sought a 150-year lease to extract approximately 60 million tonnes of product coal per year. This was reduced to a 60-year lease with an estimated yield of 2.3 billon tonnes of thermal coal.[71] Even with the reduction of the lease, the Carmichael Mine would be one of the largest coalmines in the world.[72]

Land Services of Coast and Country Inc (LSCC) objected to the mining lease and EA on a number of grounds including climate change and public interest grounds.[73]

LSCC submitted that, although public interest was a relevant consideration under the EPA and MRA, the frameworks for considering the public interest under each Act should be distinguished.[74] LSCC submitted the MRA provided a system aimed at developing mining resources in Queensland, while the EPA focused on the protection of the environment.[75] While there was some overlap, the public interest under each Act should be considered differently, and where there was a conflict, the Court was to determine a hierarchy of provisions.[76]

LSCC submitted that the contribution the mine would indirectly make to climate change through greenhouse gas emissions from the transport and end use of the coal was relevant to considering the mandatory matters the Court must consider under the EPA and MRA including the public interest.[77]

The Court held that Scope 3 emissions should be considered in regard to the public interest, intergenerational equity, and the character, resilience and values of the receiving environment.

The Court relied on the evidence contained in the expert witness's joint report and considered that Scope 1 and 2 emissions would account for 0.01 per cent of the world emissions. This would equate to 0.25 per cent of Australia's remaining carbon budget having regard to the *United Nations Framework Convention on Climate Change* (UNFCC) where Australia pledged to limit its increase in GHG emissions by two per cent. The Court noted there was no evidence as to the impacts of Scope 1 and 2 emissions. The Court said that Scope 1 and 2 emissions from the mine were significantly less than the projected Scope 3 emissions.[78]

The Court held that the effect of CO_2 emissions in the atmosphere was cumulative and therefore the extent of the proposed emissions from the mine could not be viewed in isolation but should be viewed in respect of an increase in global emissions, providing there were not offsets to the mine elsewhere.[79]

The Court noted that CO_2 emissions from the burning of coal would occur regardless of whether the mining lease was granted.[80] The evidence before the Court indicated there would be no increase in Scope 3 emissions if the mine was not approved, and therefore, the matters relating to public interest, intergenerational equity, and the character, resilience and values of the receiving environment would not be adversely affected by the granting of the mining lease.[81]

The Court followed *Xstrata* and *Hancock* to find that Scope 3 emissions fell outside the Scope of the MRA.

The LSCC submitted that as the coal market is demand driven, by not recommending the granting of the mining lease, the demand for coal would effectively be reduced. The Court found that demand for coal would occur regardless of whether the mining lease was granted and there would be no increase in greenhouse gas emissions if the mine was approved.[82]

The Court considered the public interest in relation to climate change and applied *Hancock.* Given that there would be no increase in greenhouse gas emissions if the mine was approved, the Court held there would be no adverse impact on the public interest regarding Scope 3 emissions,[83] and no impact that would constitute or cause environmental harm.[84]

LSCC also submitted that public interest under the MRA was different from public interest under the EPA. McDonald P held that the Court must endeavour to give effect to the presumption that the two laws were intended to work together[85] and the first question for the Court was whether the mine could be developed in an ecologically sustainable way.[86]

Closer to Brisbane - New Acland

NAC's involvement in the Acland area begun in December 1999. The town of Acland was described by a local resident as 'a growing town, not a dying town when NAC began mining nearby'.[87] Stage 1 of the mine commenced in 2002.

In 2001 *New Acland No. 3* [88] 15 objections were lodged to the mining lease application and then subsequently withdrawn (the bulk of the issues relating to the objections were resolved through mediation).[89] Public interest was limited to public roads, and cultural heritage. There was no reference to wider issues. In recommending the mining lease be granted, the Court ordered that the EMOS be changed to require New Acland Coal (NAC) to develop a Cultural Heritage Management Plan.[90]

In 2006 *New Acland Coal* [91] faced an unopposed application for a grant of mining lease to significantly expand an existing NAC operating coal mine (Stage 2). This was a two page decision (made on the papers) with no reference to section 269(4)(k) although the then President did say he had taken all section 269(4) factors into account. NAC had a draft EA and the tribunal found there was no evidence that the public right and interest would be prejudiced by the expansion of the mine and recommended the granting of the mining lease in whole.[92]

The *New Acland*[93] decision of 2017, relating to a proposed Stage 3, was a very different affair. The Court was required to consider a number of public interest issues, including air quality, noise, lighting, visual amenity, traffic, economics, agriculture, climate change, biodiversity/flora and fauna, physical and mental health, effects of mine on land value, rehabilitation, livestock, community and social environment and intergenerational equity.

Although the objections were framed as both MRA objections and EA objections, the Court's decision focussed on the question of public interest under s 269(4)(k) of the MRA, rather than the standard criteria.

The decision demonstrates the growth of objections before the Court, as well as the Court's capacity to consider public issues not widely considered in the past.

Acland would cease to exist

One of the objections was that the town of Acland would cease to exist if the proposed Stage 3 proceeded.[94]

In 2007 NAC had an active policy to purchase as much property as possible in the Acland region and to remove a 'great bulk' of those buildings on the presumption that Stage 3 would be approved. NAC bought and removed approximately 27 buildings. Acland is a now town of few buildings including two personal residences, a hall owned by NAC, the Acland No.2 Colliery, the War Memorial and Park and school buildings.[95] In the words of Member Smith, 'Acland as a town has, effectively, ceased to exist'.[96]

The Court found the evidence relating to the destruction of the Acland Township could not be ignored. Regardless of the contrasting evidence put forward by witnesses concerning the population of Acland, the Court found that the purchase and subsequent removal of buildings by NAC had significant contribution to, and basically caused, 'the destruction of the Acland township and impacted negatively on the social fabric of nearby residents'.[97] The removal of a majority of the buildings in Acland was described as in all likelihood, killing off any chance of the Acland town surviving.[98]

The Court also considered the divisions in the community and found both sides of the debate had contributed to creating the divide within the Acland community.[99] The Court stated that an adverse recommendation for granting Stage 3 could have further impact on the community divide.[100]

Climate change

By the time of New Acland, the science of climate change was well accepted and it was not contentious that most of the thermal coal extracted would be burnt overseas.[101] The Court also accepted that, if customers did not buy the NAC coal, they would buy from some other source, so that there was no net effect on the greenhouse gas emissions. Again, a submission about climate change failed to gain traction.

Health

The Court heard from experts about whether the noise and air quality issues that come with mining would affect the physical health of the community. It accepted the evidence of individual objectors that the mine had disturbed their sleep and that air quality may have affected their health. The Court found that appropriate EA conditions would minimise the health impacts of the mine.

The Court also heard evidence about the Mine's mental health effects on the community. It acknowledged the divisions in the community, the hurt and distress felt by many people and the increased stress some people experienced because of the mine.[102] However, the Court concluded that, with appropriate conditions, there would be no unacceptable impact on mental health.[103]

The Judicial review

The Supreme Court decision in New Acland[104] said many things about the Land Court's jurisdiction and the way it conducts hearings, which may be the subject of another paper at another time.

Bowskill J did not consider that the consideration of the standard criteria was 'at large'. In her view, the standard criteria are to be considered in light of the subject matter to be decided – an EA to carry out particular activities.[105] Bowskill J otherwise declined to comment on the interpretation of 'standard criteria' suggested by McMurdo P in *Coast & Country*[106] because a discussion on that point would not answer the questions put to her in the judicial review.

The Court did find that, even if an expanded view of section 269(4)(k) was possible, it did not expand the Land Court's jurisdiction to 'fully consider' activities not authorised under the mining lease or the MRA but which depend on authorisiation under another Act.[107]

There is, however, a suggestion that the Court preferred a restriction on the extent to which section 269(4)(k) allowed a wide ranging consideration of factors. The Court found that s 269(4)(k) should be construed harmoniously, not inconsistently, with sections 269(4)(i) and (j) so that it could not be relied upon to expand the Court's jurisdiction to include consideration of adverse environmental impacts caused by operations or activities for which some other source is the authority other than the proposed mine.[108]

What a journey we've had!

What can we conclude from our trip around Queensland? Here's some thoughts:

1. The Land Court has acknowledged that the social impacts of mining are diverse; ranging from school bus routes to Scope 3 emissions.
2. If an objector raises a question of social impact, the Land Court will consider it.
3. Usually, the Court finds that the social impacts of mining can be addressed by conditions.
4. Although the Court accepts the subjective evidence of community members as to the impacts of mining on their health and wellbeing, it prefers the objective evidence of experts.

As to climate change and global warming, the Land Court:

1. Accepts that climate change is real.
2. Accepts that climate change is caused by human behaviour.
3. Is entitled to look at Scope 1 and 2 emissions in considering whether or not to recommend the grant of a mining lease.
4. May consider Scope 3 emissions only where there is evidence linking the mining activity to the Scope 3 emissions. To date, none of the evidence has demonstrated that link, because the evidence has always been that, if the end user doesn't buy this mine's coal, it will buy another mine's coal and there will be no net change to the emissions.

Like all courts, the Land Court can only act on evidence. The science on climate change has become increasingly sophisticated and the Land Court has, incrementally, acknowledged that objectors have legitimate concerns about climate change.

There will always be a tension between the perceived benefits of a new mine and the environmental issues that it presents. As I commented at the beginning of this paper, mining is a fundamental part of Queensland's economy and identity. The Land Court's role is recommendatory only. Even if the Court is persuaded that a mine is ecologically unsustainable, I suspect it will take compelling evidence to persuade the State to the same view.

But it is worth remembering that, unlike the conditions on a development application in the Planning & Environment Court, most EA conditions are pre-conditions; until the miner produces an acceptable management plan for each of the nominated environmental issues, mining cannot start. In theory at least, this regime provides proper protection for the environment and Queenslanders.

1 Her Honour Member Stilgoe gratefully acknowledges the assistance and contributions of Lya McTaggart and Krystal Cunningham-Foran Associates of the Land Court of Queensland.
2 Land Court of Queensland, Summary of the Land Court of Queensland's Jurisdiction, 5.1.
3 *Mineral Resources Act 1989* (Qld) s 260; *Environmental Protection Act 1994* (Qld) ss 182, 216.
4 *Mineral Resources Act 1989* (Qld) s 268(3).
5 President Fleur Kingham, 'The Land Court of Qld-The Challenge of an Administrative Function', paper presented at a Workshop of Environmental and Planning Courts and Tribunals Auckland (12 April 2017) 2.
6 *Mineral Resources Act 1989* (Qld) s 269(2); *Environmental Protection Act 1994* (Qld) s 190; Land Court of Queensland, Summary of the Land Court of Queensland's Jurisdiction, 18.
7 Land Court of Queensland, Summary of the Land Court of Queensland's Jurisdiction, 18.
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