

Speaking Notes for Paul Smith
Environmental and Resource Law in Queensland Australia
Yunnan High Peoples Court
China
29 October 2018

Please let me commence by saying what an honour it is for me to speak to you today. My name is Paul Smith and I am a member of the Land Court of Queensland. The Land Court is a specialist Court which hears matters involving disputes about mining; the terms of environmental authorities; Indigenous Cultural Heritage matters; Land Valuations; compensation claims for mining activities; compensation claims for the compulsory acquisition of land by the government; and issues about rights to water.

Today I am going to focus specifically on the environmental issues which arise in many cases.

If I had to sum up the key concept behind environmental law in Queensland in just three words, then those words would be Ecologically Sustainable Development.

So what is ecologically sustainable development? For new developments in Queensland, whether they are the development of new shopping centres or other buildings; new housing estates; new mines; or new dams; etc, various pieces of state legislation provide for a balancing exercise to be conducted by the courts.

The courts consider matters such as the protection and preservation of the environment; intergenerational equity (which means handing to the next generation and those that follow a natural environment at least as good as the current environment); the Precautionary Principle (which means taking special care in circumstances where there is a lack of scientific certainty as to the impacts of the development); economic development; maintaining or improving social, physical and cultural wellbeing of people and the community; and whether the development is of local, state or national importance.

The parties to the cases before the court include the person or company proposing the development; the owner of the land (if the owner is not the developer), perhaps neighbouring property owners; and, in some circumstances, members of the community. Before the Land Court, parties often include environmental interest groups.

The court frequently hears evidence from Expert witnesses. Unlike normal witnesses, experts are allowed to give evidence of their opinion based on their area of expertise and the specific facts of the case being heard. I recently heard a mining case where there were 28 expert witnesses, with many of those experts giving evidence relating to environmental issues. Areas of expert opinion relating to the environment included noise, dust, vibration, artificial light spillage, impacts on groundwater, surface water, threatened flora and fauna, and many others.

Expert environmental evidence can be very complicated and highly technical. Sometimes the expert evidence is based on relatively clear facts; other times the experts give heavy reliance to computer modelling, which leads to disputes between the parties as to whether the computer model is appropriate and properly configured.

The experts are engaged by the parties, not the court. This means that different parties may each engage an expert on the same area of expertise. As a result, there may be multiple experts on the same topic. In order to ensure that the expert evidence is of the best possible assistance to the court, court procedures require in those circumstances that the experts in the same field meet together before the case goes to court in order to prepare a joint expert report. The joint expert report sets out those areas where the experts agree, as well as those areas where the experts disagree, with their reasons for disagreement explained. Joint expert reports have been proven to greatly reduce the time required to take evidence from witnesses.

At this point, I should specifically mention the new process of Court Managed Expert Evidence introduced into the Land Court this year. My paper on the Land Court includes specific details about this new process, including the Practice directions which govern it.

Although I have only been able in the time available to give a brief overview of some of the considerations that the court takes into account in environmental matters, I hope it has been of some assistance to you. These comments of course have focussed on civil environmental matters. Criminal matters involving breaches of environmental compliance are set out in some detail in my paper.