

**COURT OF APPEAL  
SUPREME COURT OF QUEENSLAND**

CA NUMBER: **5751** of 2018  
NUMBER: BS No 6002 of 2017

Appellant: **Oakey Coal Action Alliance Inc**  
AND  
First Respondent: **New Acland Coal Pty Ltd ACN 081 022 380**  
AND  
Second Respondent: **Chief Executive, Department of  
Environment and Science**

**NOTICE OF APPEAL**

To the respondents

And to the Registrar, Supreme Court of Queensland (Trial Division)

TAKE NOTICE that the appellant appeals to the Court of Appeal against the whole of the orders of the Supreme Court made pursuant to the decisions in *New Acland Coal Pty Ltd v Smith & Ors* [2018] QSC 88 and *New Acland Coal Pty Ltd v Smith & Ors (No 2)* [2018] QSC 119.

**1. THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE –**

Date of Judgments: 2 May 2018 and 28 May 2018

Description of Proceedings: BS No 6002 of 2017

Description of parties involved in the proceedings:

Applicant: New Acland Coal Pty Ltd ACN 081 022 380

AND

First Respondent: Paul Anthony Smith, Member of the Land Court of Queensland

AND

Second Respondent: Oakey Coal Action Alliance Inc

NOTICE OF APPEAL  
Filed on Behalf of the Appellant  
Form 64, version 4  
UCPR r 747(1)

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AND

Third Respondent: Chief Executive, Department of Environment and Science

Name of Primary Court Judge: Bowskill J

Location of Primary Court: Brisbane

## 2. GROUNDS -

### Groundwater

1. The primary judge erred in law in construing the *Mineral Resources Act* 1989 (Qld) (MRA) and the *Environmental Protection Act* 1994 (Qld) (EPA):
  - (a) in concluding that the Land Court had no jurisdiction and it was an error of law for the Land Court to consider, when hearing objections and making recommendations under s 269 of the MRA and s 190 of the EPA, the potential impacts of the proposed mine on groundwater quantity; and
  - (b) in concluding that, even if the Land Court did have jurisdiction to consider the potential impacts of the proposed mine on groundwater quantity, that jurisdiction did not extend to permit the Land Court to “fully consider” such impacts because such consideration would prejudice the outcome of, or precluded or prevented, or was made without regard to, the assessment of an application for an associated water licence for the proposed mine under the *Water Act* 2000 (Qld).
2. The primary judge erred in law and exceeded the jurisdiction of the Supreme Court on judicial review by concluding that “it is difficult to see why [the Land Court member] did not make a recommendation, referring to his concerns [about groundwater], and making it clear (consistent with the legislation in any event) that if the mining lease was granted, operations should not be permitted to commence until an associated water licence was obtained (as in *Hancock*)” as this involved adverse conclusions on the merits of the Land Court member’s decisions and recommendations made within jurisdiction.

### Sufficiency of reasons on groundwater

3. The primary judge erred in law in concluding the Land Court member’s reasons were inadequate and failed to accord procedural fairness by failing to address at all the operation of the associated water licence provisions of the *Water Act* 2000 (Qld) and failing to properly address the First Respondent’s argument concerning the operation and effect of the combined role of the various other approvals and conditions to address his concerns about the uncertainty associated with the groundwater modelling. The primary judge erred in making this conclusion by:
  - (a) failing to give the member’s reasons a beneficial construction;

- (b) concluding that standard to be applied in determining the sufficiency of the member's reasons was the same as if the member had been exercising a judicial function, even though the member was exercising a non-binding, administrative function;
- (c) failing to conclude that the extent of the member's duty to give reasons was affected and defined by the statutory function that was served by the giving of the reasons;
- (d) failing to conclude that the primary statutory function that was served by the giving of reasons within the statutory context of s 269 of the MRA and s 190 of the EPA was to inform and guide the MRA Minister and the administering authority in making their respective decisions under the MRA and EPA (**the statutory function of the reasons**);
- (e) failing to conclude that the member could lawfully tailor his reasons to meet the statutory function of the reasons, as the member stated he had done in his reasons; and
- (f) failing to have regard to material circumstances in which the reasons were given, namely:
  - (i) the urgency to provide the decisions as repeatedly requested by the First Respondent; and
  - (ii) the enormity of the evidence and submissions before the member.

#### **Intergenerational equity**

4. The primary judge erred in law by concluding that the Land Court member's consideration and application of the principle of intergenerational equity was unlawful as a consequence of his consideration of the impact of the mine on groundwater quantity.
5. The primary judge erred in law and exceeded the jurisdiction of the Supreme Court on judicial review by concluding that the Land Court member incorrectly applied the principle of intergenerational equity as a mandatory requirement and failed to properly balance it with other considerations such as the economic benefits of the mine as:
  - (a) in reaching this conclusion the primary judge failed to give the member's reasons a beneficial construction;
  - (b) this involved adverse conclusions on the merits of the Land Court member's decisions and recommendations made within jurisdiction; and
  - (c) the Land Court is not required to weigh up (that is, balance) the considerations in s 269(4) of the MRA or s 191 of the EPA, rather, the weight to be given to the matters set out in each is a matter for the Land Court and its relevant function is not qualified by any requirement about the manner in which it must consider the identified matters.

**Noise conditions**

6. The primary judge erred in law by failing to give a beneficial construction to the Land Court member's reasons that he was "compelled" and had "no option" but to recommend refusal of the application to amend the environmental authority under s 190(1) of the EPA due to his inability to recommend noise conditions inconsistent with Coordinator-General's stated conditions and, in doing so, he did not conduct the balancing exercise required by s 191 of the EPA.
7. The primary judge erred in construing s 190 of the EPA:
  - (a) by concluding s 190 allowed the Land Court member to recommend approval of the application to amend the environmental authority subject to a condition that the recommendation not take effect until a Coordinator-General's condition is changed; and
  - (b) by failing to conclude that the Land Court member had no power under s 190 to recommend conditions that were inconsistent with the Coordinator-General's conditions and, as a consequence, in circumstances where the Land Court member had formed a view that the appropriate noise levels that ought to be imposed as conditions on the environmental authority for the mine were inconsistent with a Coordinator-General condition, the only option lawfully available to the member was to recommend refusal of the application.

**3. ORDERS SOUGHT -**

1. The appeal is allowed.
2. The orders of the Supreme Court are set aside.
3. The First Respondent pay the Appellant's costs of the appeal and the proceedings in the Supreme Court.

**~~LEAVE TO APPEAL~~**

- ~~4. This appeal is brought pursuant to leave given by *(insert court)* on *(date)*.~~
- ~~5. Leave to appeal was given for the following questions—~~
  - ~~(a)~~
  - ~~(b)~~
- ~~6. Leave to appeal was given because *(specify why leave to appeal was given)*~~

**7. RECORD PREPARATION**

I/We undertake to cause a record to be prepared and lodged, and to include all material required to be included in the record under the rules and practice directions and any order or direction in the proceedings.

**PARTICULARS OF THE APPELLANT:**


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 Appellant's solicitor's name: Sean Ryan (Principal Solicitor)  
 and firm name: Environmental Defenders Office (Qld) Inc  
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**PARTICULARS OF THE FIRST RESPONDENT:**

Name: New Acland Coal Pty Ltd ACN 081 022 380  
 Business address: 3/22 Magnolia Drive, Brookwater, Qld, 4300  
 Respondent's solicitor's name: Mark Geritz  
 and firm name: Clayton Utz  
 Solicitor's business address: Level 28, Riparian Plaza  
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**PARTICULARS OF THE SECOND RESPONDENT:**

Name: Chief Executive, Department of Environment and Science  
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 Third Respondent's solicitor's name: Peter Dwyer  
 and firm name: Crown Law  
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Signed:  .....

Description: Appellant's solicitor  
 Dated: 30 May 2018

This Notice of Appeal is to be served on:

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**Paul Anthony Smith, Member of the Land  
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