SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS4189/16

Applicant	**LAND SERVICES OF COAST AND COUNTRY INC**
	AND
First Respondent	**CHIEF EXECUTIVE, DEPARTMENT OF ENVIRONMENT AND HERITAGE PROTECTION**
	AND
Second Respondent	**ADANI MINING PTY LTD**

FIRST RESPONDENT'S OUTLINE OF ARGUMENT

Summary

(1) The application should be rejected on either the original grounds of the application, or on the grounds as the applicant seeks to replace them. None of them are sustainable.

(2) It appears that, in part, the Applicant wishes the Court to determine whether the decision of the delegate is one which "best achieves" the object of protecting Queensland's environment while allowing for development which improves the total quality of life, both now and in the future in a way that maintains the ecological processes on which life depends. Such a determination would involve numerous political and value judgments relating to environmental protection and the balancing of commercial development. They are not matters which are justiciable by the court or, if they were, the Court would decline to consider them.

(3) In short, on either form of the applicant's grounds for the judicial review application, the applicant contends that in the Department's decision, the decision-maker did not correctly apply or consider s. 3 of the EP Act (Objects [of the Act]) and s. 5 (Obligations of persons to achieve object of Act). However, it does so by misconstruing those sections and asserting that the delegate was bound to make the

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decision which was the "best way" of preserving the environment whilst allowing development. That, however, is not required by those sections.

(4) The reframed grounds of the application seek to write into ss.3 and 5 additional requirements to the effect that the delegate was required to reach a positive state of mind in relation to the objects of the Act before the decision might be made. No such condition of the exercise of power is express or implied in the legislation.

(5) To the extent to which the grounds can be taken to be assertions of a failure to take into account relevant considerations; namely the objects of the act; it is pellucidly clear from the reasons for decision that the delegate took those matters into account. The delegate has subsequently deposed to taking those matters into account. There is nothing in the submissions of the Applicant which suggest to the contrary.

Chronology of key events

(6) The Department submits that for the purposes of this application, the following are the key events, in chronological order:

- **9 July 2013** – Adani submitted an application to the department of a site-specific environmental authority for the Mine;[1]
- **28 August 2014** – the date when the Department prepared a draft environmental authority (with lengthy conditions);[2]
- **31 March 2015** – commencement of hearings of the Land Court[3] which included objections to, and consideration of, the draft environmental authority;
- **15 December 2015** – the date of the decision of the President of the Land Court which recommended that the draft environmental authority be issued by the Department, subject to the addition of some further conditions;[4]
- **2 February 2016** – the date of the decision by the Department's decision-maker to accept the recommendations of the President of the Land Court, including the additional conditions.[5] This is the decision the subject of this judicial review application.

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[1] [7] of Land Court decision *Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors* [2015] QLC 48, Exhibit DD-1 to the affidavit of Mr DFV Davies, affirmed on 26 April 2016 on behalf of the Applicant, at p.9 of the exhibit bundle.

[2] [10] of the Land Court decision. The draft environmental authority itself is Exhibit 'KB-3' to the affidavit of KJ Bennink affirmed 16 June 2016.

[3] Page 1 of the Land Court decision, p.1 of the exhibit bundle of Mr Davies' affidavit.

[4] Page 2 of the Land Court decision, p.2 of the exhibit bundle of Mr Davies' affidavit.

[5] Exhibit DD-2 to Mr Davies' affidavit. The statement of reasons for the decision given to the applicant is exhibit DD-4.

The key events integrated with the statutory framework

(7) This part of the outline will analyse the events in the chronology of the matter, integrated with the relevant statutory framework.

(8) The Land Court decision[6] records the history of the matters leading up to it, made on the objections to the issue of the environmental authority for the mine. The Land Court decision records that Adani made a site-specific application for the environmental authority for the Carmichael Mine, for which the head of authority is s. 172 of the EP Act, contained in chapter 5 (Environmental authorities and environmentally relevant activities). Although there is no requirement in that provision that the administering authority issue a draft environmental authority, there is nothing in that provision of the Act which would prevent the issue of a draft environmental authority.

(9) The provisions under which the Department makes a decision on the draft environmental authority are in the EP Act, chapter 5, part 5 ('Decision stage'), division 3 ('Applications for mining activities relating to a mining lease'), containing ss. 180 – 194. Under s. 181 the 'administering authority'[7] must give the applicant for the environmental authority and any submitters, written notice of the decision and if the decision is to approve an application:

(i) be accompanied by the draft environmental authority; and

(ii) state a submitter may, by written notice to the administering authority, request that its submission be taken to be an objection to the application.

(10) The Land Court set out in its decision the statutory framework of the EP Act including s. 3[8] of the EP Act and s. 5.[9] Referrals to the Land Court are covered by ss. 184 – 193 of the EP Act. Under s. 185, the administering authority must refer the application for the environmental authority to the Land Court under s. 195(1) if an objection notice for a submission about the application is given (by an objector to the approval of an environmental authority) to the administering authority – see s. 184(a).

(11) The draft environmental authority must be given to the Land Court for it to consider. The nature of the decision to be made by the Land Court is described in

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[6] Exhibit DD-1 to the affidavit of Mr Davies.
[7] Defined in the Dictionary to the EP Act (schedule 4) to mean the 'chief executive' for the Act. That power may be delegated, under s. 516 of the Act.
[8] [24].
[9] [26].

s. 190 as 'the objections decision'. The Land Court's objections decision is not legally binding on the administering authority, but instead is a recommendation to the administering authority. If a draft environmental authority[10] is given for the application for the environmental authority, the scope of the Land Court's objections decision is to be a recommendation that the application for the environmental authority:

(i) be approved on the basis of the draft environmental authority; or

(ii) the application be approved, but on stated conditions that are different to those in the draft environmental authority; or

(iii) the application for the environmental authority be refused.[11]

(12) In the objections decision, the President of the Land Court identified the matters to be considered by it under the EP Act in [31] - [35].

(13) At [58] of the objections decision, the Land Court applied the effect of s. 5 of the EP Act and accepted that:

> The Court must exercise its powers in the way that best achieves the objects of that Act. That is, the Court must recognise that the object of that Act is to protect Queensland's environment while allowing for development that is economically sustainable.

The importance of the analysis and application of ss. 3 and 5 of the EP Act by the Land Court for the purposes of the impugned decision will be addressed below.

(14) The Land Court considered the objection to the draft environmental authority of the Applicant (in this judicial review application).[12] The end result of the objections decision was that the President of the Land Court recommended to the administering authority that the environmental authority be issued in terms of the draft environmental authority (issued on 28 August 2014) subject to the insertion of some additional conditions concerning the Black Throated Finch and that the research management plan include provision for funding a resource project on other specific aspects relating to the environment.[13]

(15) After consideration of the Land Court's decision, on 2 February 2016, the decision-maker on behalf of the Department, Ms Bennink[14] made the decision to issue the permit on behalf of the Department to approve the environmental authority which is the subject of this judicial review application.

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[10] Section 190(1).
[11] See s. 190(1)(a).
[12] See paragraph [61] and following of the Land Court's objections decision.
[13] See the formal orders of the Land Court at pages 1 - 2 of the exhibit bundle to Mr Davies' affidavit.
[14] See her affidavit affirmed on 16 June 2016.

(16) The provision of the EP Act under which the environmental authority was issued, s.194(2) is the critical provision for the purposes of this judicial review application. That provision applies in its terms because the administering authority referred the application to the Land Court and an objections decision was made about the application.[15] The scope of the decision that may be made by the administering authority under s. 194(2) depends on whether a draft environmental authority was given for the application. Since the answer to that question is in the affirmative, the scope of the decision that may be made by the administering authority is as follows:

> (2) The administering authority must decide –
>
> (a) if a draft environmental authority was given for the application –
>
> (i) that the application be approved on the basis of the draft environmental authority for the application; or
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> (ii) that the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or
>
> (iii) that the application be refused.

(17) The permit for the issue of the environmental authority dated 2 February 2016[16] was a decision under s. 194(2)(a)(ii), that the application for the environmental authority be approved, but on stated conditions different to those in the draft environmental authority, because the decision-maker adopted the objections decision by the Land Court to approve the conditions in the draft environmental authority, together with the additional conditions recommended by the Land Court.[17]

(18) In particular, the environmental authority as issued contains 90 pages of conditions (including the definitions contained in appendix 1, the rehabilitation requirements in appendix 2, and the subsidence data material in appendix 3, but excluding the figures contained in appendix 4).

(19) The decision-maker read and considered the objections decision of the Land Court including paragraphs [24] – [28] and [49] – [58] of that decision, which contained the consideration by the Land Court of ss. 3 and 5.[18]

(20) The decision-maker deposes that she:

> … took into account and applied the objects of the EP Act as stated in section 3 of the EP Act, when making my decision to approve the Environmental Authority to Adani. The purpose of the conditions of the

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[15] Section 194(1)(a).
[16] See exhibit DD-2 to the affidavit of Mr Davies.
[17] See the Statement of reasons for the decision dated 20 March 2016.
[18] Affidavit of KJ Bennink at paragraph 14.

> Environmental Authority is to balance protection of the environment against the nature of the Carmichael Coal Mine proposed by Adani, and to minimise and mitigate the potential adverse environmental effects of that Mine to the receiving environment … I am also aware that the Act requires that when functions are to be performed or powers are to be exercised under the Act, they are to be performed or exercised in the way which best achieves the objects. I was aware of these matters at the time when I made the decision to approve the Environmental Authority to Adani.[19]

Justiciability of the issues raised.

(21) To the extent to which the Applicant asserts that the decision maker did not comply with s.5 of the Act, that issue is not one which is capable of resolution by the Court.

(22) If the question raised by the Applicant in relation to ss.3 and 5 of the EPA is that the decision maker did not exercise her power "in the way that best achieves" the legislative object "to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends", that issue is not one which is justiciable in a Court of Law. The questions involved in a determination of such an issue are laden with value and political judgments about the need for development and what improves the total quality of life. There are no judicially manageable norms by which a determination of that question might be made. Because of that the matter is not justiciable or the Court would decline to consider the issue.

(23) In *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd*[20] the Full Court of the Federal Court recognised that decisions of the federal Cabinet were reviewable by the Courts in general, including those which were made by exercise of the Royal Prerogative. In that case, the decision of Cabinet had been to nominate certain land for inclusion on the World Heritage List. Peko-Wallsend held certain exploration rights over the land and sought to invalidate the decision. Whilst holding that the Cabinet decisions were capable of being reviewed, the Court held that the subject matter of the decision concerned matters on which the Court could not arbitrate and, hence, it was beyond review by the Court. It said:

> "However, the whole subject-matter of the decision involved complex policy questions relating to the environment, the rights of Aboriginals, mining and the impact on Australia's economic position of allowing or not allowing mining as well as matters affecting private interests such as those of the respondents to this appeal. It appears to me that the subject-matter

[19] Affidavit of KJ Bennink at paragraph 15.
[20] (1987) 15 FCR 274, 278-9.

of the decision in conjunction with its relationship to the terms of the Convention placed the decision beyond review by the court.

(24) In other words the Courts will not enter into domains which do not concern it; being those issues which involve consideration of political issues and questions.[21]

(25) In *Stewart v Ronalds*[22] the Supreme Court of New South Wales was asked to review the decision of the Premier to recommend to the Governor that the plaintiff be dismissed as a Minister. Apart from other reasons, the Court of Appeal noted that the subject matter of the decision was not one which was capable of adjudication by the Courts. Allsop P said:

> [42] Central to the identification of the kinds of decisions amenable to review by the courts is the suitability of the subject for judicial assessment and, in particular here, whether the assessment of the legitimacy or otherwise of the decision depends on legal standards or by reference to political considerations: *R v Toohey* (at 222) per Mason J; *Re Ditfort; Ex parte Deputy Commissioner of Taxation* (1988) 19 FCR 347 at 370 (per Gummow J); *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd* (1987) 15 FCR 274 at 279 (per Bowen CJ) and 308 (per Wilcox J); *Council of Civil Service Unions v Minister* (at 418) per Lord Roskill; *Marbury v Madison* 5 US (1 Cranch) 137 (1803) at 170.
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> [43] It is not necessary or appropriate to attempt a definition of the limits of judicial power by reference to the notion of justiciability. Essential to the task is the identification of the controversy, its limits and character. Often the nature and extent of rights of individuals, whether of a proprietary or other character, as affected by the asserted wrong will bespeak a justiciable controversy. The presence of standards capable of being assessed legally may do likewise. Difficult questions arise if a subject is justiciable, but it is said not to be "appropriate" for the courts to interfere: cf *Petrotimor Companhia de Petroleos SARL v Commonwealth* (2003) 126 FCR 354 at 373–374 (per Black CJ and Hill J), 379–380 and 429–430 (per Beaumont J).

(26) To the extent to which the question in the present matter concerns whether or not the decision of the delegate was actually one which best achieved the legislative objects, the subject matter of the complaint is not one which is susceptible of the review sought given the lack of judicially manageable norms and is one[23] in respect of which the Court should decline to exercise its power to review, assuming that the power exists.[24] The Court does not have the resources to gather and consider the evidence necessary to ascertain what decision in relation to the application "best

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[21] *Re Ditfort; Ex parte Deputy Commissioner of Taxation* (1988) 19 FCR 347 at 370.
[22] (2009) 76 NSWR 99, 132.
[23] *Petrotimor Companhia de Petroleos SARL v Commonwealth* (2003) 126 FCR 354, esp 379, 429 – 430.
[24] *Per* Mason J in *The Queen v Toohey; Ex Parte Northern Territory Land Council* (1981) 151 CLR 170 , 222.

achieves" the balance between the environment and development in a way which improves the quality of life now and into the future. Even if the necessary evidence could be gathered, the decision would involve a multitude of value judgments which the Court is not qualified to make.

The applicant's grounds for the judicial review application

(27) The grounds of the application for judicial review as filed are as follows (omitting reference to the JR Act):

> **Ground 1**
>
> The decision involved an error of law in that the delegate failed to apply the command in section 5 of the EPA when exercising the power under section 194 of the EPA.
>
> **Ground 1A (in the alternative to Ground 1)**
>
> The delegate failed to consider a relevant consideration, namely the command in section 5 of the EPA, when exercising the power under section 194 of the EPA.

(28) After the applicant has seen the refutation of those grounds contained in the affidavit of Ms Bennink,[25] the Applicant has abandoned those grounds. It now seeks to amend its application to put new grounds of review in substitution for the earlier grounds described above. The proposed new grounds (omitting references to the JR Act) are as follows:

> **Ground 1**
>
> The decision involved an error of law in that the delegate misconceived sections 3 and 5 of the EPA, in particular the delegate failed to appreciate that she was required to consider and be positively satisfied her decision to approve (with or without conditions) or refuse the application for the environmental authority was the best way to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological process on which life depends.
>
> **Ground 2**
>
> The decision involved a jurisdictional error in that the delegate failed to apply herself to the real question to be decided pursuant to section 5 of the EPA when performing the function and exercising the power under section 194 of the EPA. Section 5 required her to be positively satisfied that in making the decisions she was performing her function and exercising her power in the way that best achieves the objects of the EPA. This required her to consider and determine whether, in performing the function and exercising the power in that way, she would be adopting the best way of protecting Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends. However, the delegate did not do this. She did not consider and determine this question.

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[25] Especially at paragraphs 14 and 15 of her affidavit.

(added emphasis)

(29) Critically for the outcome of this judicial review application, the underlined words above are not contained in the text of s. 194, or sections 3 or 5 of the EPA. They are a 'wishful thinking' gloss added by the applicant.

The applicant's initial grounds for review

(30) Firstly, there can now be no basis on which the grounds of judicial review in the applicant's application as initially filed, can succeed. The evidence in paragraphs [14] and [15] of the affidavit of the decision-maker, makes clear that she took into account and applied the command in s. 5 of the EP Act when making her decision. As much seems to be acknowledged by the Applicant when, subsequent to being served with Ms Bennink's affidavit, the Applicant seeks leave to replace the grounds as initially filed with completely new grounds.

The applicant's new grounds of review

(31) Even if the Applicant obtains leave of the court to replace the grounds as initially filed, with the proposed new grounds, those grounds will fail in any event.

(32) The proposed new grounds should not succeed for three reasons:

(a) They are premised on a fundamental error of construction of ss. 3 and 5 of the EP Act, that in making a decision under s. 194 of the EP Act, a decision-maker was required to be satisfied that the environmental authority 'was the best way to protect Queensland's environment' while allowing for the relevant development;

(b) The decision-maker had the advantage of reading, and applying and adopting the Land Court's objection decision which carefully considers the application of ss. 3 and 5 of the EP Act, and about which the Applicant makes no criticism. If there is no error in the approach of the Land Court, then to the extent that the decision-maker adopted the recommendations of the Land Court, she received the guidance of the Land Court in making her decision;

(c) What the Applicant contends for in the new grounds are not justiciable by a court on judicial review, because the grounds ask the court to look inside the mind of the decision-maker and ask whether she could be 'positively satisfied' that the decisions she was making were the 'best way of protecting Queensland's environment' balanced against the relevant development. It is not the case that the Applicant is arguing that there was no evidence to justify the

making of her decision.[26] That being the case, the Applicant's argument is inevitably a 'merits' argument on the desirability of the decision she made. For the reasons which have been identified above, it would not be possible to ascertain whether or not the delegate's conclusion was correct.

In relation to the new ground 1.

(33) There is no principle of statutory interpretation which would allow ss. 3 and 5 to be interpreted in the way the Applicant suggests, to incorporate a 'best way to protect Queensland's environment' test. Application of s. 14A of the *Acts Interpretation Act 1954* certainly does not assist the applicant. The purpose of the EP Act is clear, in s. 3, of identifying a balance between the protection of Queensland's environment whilst allowing for relevant development. Section 3 is clear in its terms and neither it nor s. 5 allow for the value-laden addition that the applicant injects, which has not been chosen by Parliament in making those provisions.

(34) The new ground 1 fails *in limine* as it fails to identify the correct interpretation of s.3. Whilst s.5 requires the exercise of powers in such a way that "best achieves" the object of the Act, the two sections cannot be blended to change the object of the Act as ensuring that the powers be exercised in the "best way to protect the environment" etc.

(35) It is not surprising that the decision-maker's statement of reasons, or her affidavit (each of them made before formulation of the proposed new grounds) do not themselves say that the decision made was the 'best way of protect Queensland's environment' while allowing for the relevant development. Those additional words do not appear in ss. 3 or 5. It is disingenuous to criticise either because the decision-maker's reasons or affidavit for not doing so.[27]

(36) Additionally, there is nothing in ss.3 and 5 which imposes a jurisdictional condition on the exercise of any power under the EPA to the effect that the decision maker or person exercising the power reaches a state of positive satisfaction that their decision or exercise of power will achieve the object of the Act. The attempt to impose into the statute the superadded requirement that the persons exercising powers have a specific state of mind is not justified.

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[26] Under s. 20(2)(h) of the JR Act.
[27] See for example, paragraphs [52] and [53] of the Applicant's outline.

In relation to the new ground 2.

(37) The comments made above are equally relevant to the proposed new ground 2 of the Application. There is nothing in ss.3 and 5 which requires the delegate to reach the state of positive satisfaction when exercising the power under s.194 of the EPA.

(38) The proposed new second ground of review seems to also raise that the delegate did not take into account the matters in ss.3 and 5. More precisely, it appears that the allegation is that the delegate was required "to take into account" that ss.3 and 5 together provided that in the making of decisions under the Act s.5 required that the decision maker was to act in a way that 'best protects the environment'.

(39) For the purposes of argument it can be assumed in favour of the Applicant that the identified matter was to be taken into account by the decision maker. However, on that assumption it is apparent that sections 3 and 5 were taken into account. Indeed, that has been deposed to by the decision maker.

(40) Apart from the recent affidavit, the extensive reasons of the delegate by themselves (and their close connection to the reasons of the Land Court with which the delegate agreed) are sufficient to dispel any notion that the matters were not taken into account. In particular, in the reasons for decision Ms Bennink stated that she considered the Land Court Objections Decision (as she was required to do) and that document set out in fulsome detail both s.3 and s.5. There is no reason to find in the reasons for decision any failure to consider these matters.

(41) The authorities are clear that reasons for decision are not to be scrutinised by a court in an over-zealous way.[28] Instead, a statement of reasons must set out the process of reasoning so that it can be understood when read in the context of the evidence to which it relates.[29] Here the evidence before the decision-maker included the Land Court decision. The statement of reasons does this, in the discussion about the Land Court decision and why the decision-maker adopted the recommendations and reasoning of the President of the Land Court.[30]

(42) A statement of reasons should set out the 'real reason' for the decision.[31] The delegate's statement of reasons in this case does this. The 'decision' of the delegate

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[28] *Minister for Immigration and Ethnic Affairs v Wu Chan Liang* (1996) 185 CLR 259 at 272 per Brennan, Toohey, McHugh and Gummow JJ.
[29] *Ergon Energy Corporation Ltd v Rice-McDonald* [2009] QSC 213 at [23] and [24], per P. McMurdo J (as he then was).
[30] Statement of reasons exhibit DD-4 to Mr Davies' affidavit at pages 255 – 259 of the exhibit bundle.
[31] *Minister for Immigration, Local Government and Ethnic Affairs v Taveli* (1990) 23 FCR 162 per French J (as he then was) at 179, cited with approval by the Full Court of the Federal Court in *Minister for Immigration and Ethnic Affairs v Singh* (2000) 98 FCR 469 at [31].

was the decision whether or not to adopt the recommendations of the President of the Land Court, and the 'real reasons' for doing that. The delegate is not required to engaged in any academic legal exegesis on the effect of sections 3 and 5 of the EP Act. More so in this case where the objects of the EP Act are well known and given that the Land Court decision described the statutory framework in detail. Since the main purpose for the statement of reasons is to tell the applicant why the decision was made, which was a decision to approve the draft environmental authority, with the additional conditions recommended by the President of the Land Court, the statement of reasons goes into detail about the additional conditions recommended by the President of the Land Court and why the decision-maker accepted those recommendations. This is completely unsurprising, and proper.

(43) By contrast, and with respect, the submissions made in the Applicant's outline about not including a detailed analysis of ss. 3 and 5 of the EP Act are more applicable to a critique of a legal essay, or an academic review of the decision of a superior court, than an administrative decision made by a non-legally qualified decision-maker.[32] In any event, the alleged error of the failure to take the sections into account is not established by merely pointing to the absence of some esoteric discussion about them.

(44) The same can be said about the criticism of the reasons that they do not refer to 'economics, nor the major changes in economic evidence and job numbers that had been accepted by the Land Court'.[33] A decision-maker is not required to be qualified in economics, or any other specific discipline unless the relevant legislation says so. There is no requirement in s. 194 of the EP Act to that effect. That said, this complaint only emphasises the submissions about non-justiciability which are made above.

(45) Moreover, the sufficiency of a statement of reasons should recognise the statutory context in which it is found. The statutory context in the present case is that the EP Act, refers to a hearing of the Land Court, the draft environmental authority, and the objections to it. In the course of such a hearing by a court independent of the executive, the parties are the administering authority, the applicant for the environmental authority, any objector for the application and 'anyone else decided by the Land Court'.[34] Each party is able to call and cross-examine witnesses on the matters dealt with by the draft environmental authority and in the present case, the

[32] See for example paragraphs [40] – [48] of the Applicant's outline.
[33] Paragraph [35] of the Applicant's outline.
[34] Section 186 of the EP Act.

hearing was some 19 hearing days[35] and written submissions were made. The Land Court decision itself is 139 pages long. This detailed process and the statutory context in which it is found, would make little sense unless a decision-maker was not able to adopt the reasoning and recommendations made by the Land Court, if the decision-maker agreed with the recommendations and reasoning. On a number of occasions in her reasons the delegate referred to having considered or had regard to those reasons.

(46) This dovetails into the second point made above, that there is no criticism, in the Applicant's outline about the process of reasoning of the President of the Land Court in consideration and application of ss. 3 and 5 of the EP Act. If that is the case, then in adopting the recommendations of the Land Court there can be no valid criticism made of the decision-maker in this case, especially given her evidence that she had read and considered the recommendations decision of the Land Court and:

> Relevantly for present purposes, I read paragraphs [24] – [28] and [49] – [58] of the recommendations decision, which included the provisions of ss. 3 and 5 of the EP Act.[36]

The Applicant's point would have more merit if the decision-maker rejected the Land Court's reasoning and recommendations, behoving the decision-maker to describe in reasons for that decision, why she thought the recommendations and reasoning of the President of the Land Court were wrong, and should not be followed. However, that is the opposite of the present case.

RM Derrington QC

Dr GP Sammon

Counsel for the first respondent

20 July 2016

[35] Albeit in conjunction with a hearing as to whether the relevant mining leases should be granted.
[36] Affidavit of Ms Bennink at paragraph [14].