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17 December 2015

Jim Pearce MP  
Parliament Committee  
Infrastructure, Planning and Natural Resources  
George Street  
Brisbane, QLD 4000

Email: [IPNRC@parliament.qld.gov.au](mailto:IPNRC@parliament.qld.gov.au)

Dear Mr Pearce,

**RE: Inquiry into the Water Legislation Amendment Bill 2015**

Thank you for the invitation to comment on the Water Legislation Amendment Bill 2015.

#### **GVK Hancock Coal**

The shareholders of the GVK Hancock Coal companies, comprising majority shareholder GVK from India, and Hancock Prospecting in Australia, have committed in excess of \$2 Billion to date to the development of our high quality thermal coal assets in the Galilee Basin in Central Queensland.

The underpinning factors driving global energy demands remain strong and our thermal coal assets are uniquely positioned to respond to those needs. Hancock Coal Pty Ltd and Hancock Galilee Pty Ltd are proponents for Alpha Coal Mine and Kevin's Corner Coal Mine, respectively.

The mines will have a combined annual capacity of 60 million tonnes and it is estimated the flow-on economic benefits for Australia will be in the order of \$44 billion over the life of the two mines.

#### **Water Legislation Amendment Bill 2015**

The government has said the Water Legislation Amendment Bill 2015 will amend water legislation to satisfy its election commitments and policies. Those commitments and policies include:

- Overarching commitments to support for ecologically sustainable development
- Restricting how proponents of large scale projects can obtain water ("development option")
- Restricting how the Chief Executive can simplify water use from designated watercourses.

The changes purport to respond to concerns of some stakeholders. Other changes have been deferred by the Water Reform and Other Legislation Amendment (Postponement) Regulation 2015.

#### **Confusion and Concern**

Our stakeholders have worked continuously since 2009 to obtain regulatory approvals to get to a point when construction can commence, and after six years, we cannot determine that date. This is exacerbated by legislation requiring proponents to obtain, then repeatedly defend, their approvals.

It is confusing when changing governments mean changing priorities, and concerning that changes add time, cost and uncertainty to major capital intensive developments and particularly fossil fuel projects.

We are particularly concerned that the Water Legislation Amendment Bill 2015 by expressly including language around "ecologically sustainable development" in the Water Act 2000 may provide avenues and mechanisms for unmerited challenges to the granting of water licences for coal mines.

The language in the Water Reform and Other Legislation Amendment Act 2014 sets out clearly defined purposes for responsible and productive management of Queensland's water resources. We consider

the definition of “responsible and productive management” (section 59 of WROLA) provides strong and adequate tools for managing the requirements of the Water Act. Further changes are unnecessary.

### **Reasons for Concern**

The Mining Lease Application and Environmental Authority for Alpha Coal Mine have been subjected to repeated legal challenges in the Queensland Land Court, the Supreme Court, and are now before the Court of Appeal. Challenges are under such rubric as public right and interest, and ecologically sustainable development, and are particularly applied to matters associated with GHG emissions.

We note the objective of the Queensland Environmental Protection Act is environmental protection in the context of ecologically sustainable development. But the courts have consistently found that such objective does not require them to ignore evidence submitted to them that there is no increase of GHG emissions if those mines proceed. This is because alternative supply will be sourced elsewhere to meet global demand if the mine is not approved. This was recently restated for Carmichael Mine.

### **Required Outcomes**

We have a policy framework in Australia, at both State and Commonwealth government levels, which supports and facilitates the resources sector, and coal is our second largest export earner. The best way for this country to overcome its significant national debt problems is to increase exports.

The government must ensure legislative changes help, not hinder, mining projects. It must ensure avenues for repeated unmerited challenges are closed and not opened. We are concerned the Water Legislation Amendment Bill 2015 will introduce language around ecologically sustainable development which (from our repeated past experience) can be used as a basis for the challenging of the granting of water licences for coal mines. This is notwithstanding the mines have already been the subject of comprehensive environmental assessments at both State and Commonwealth levels. Regardless of how little strength bringing a challenge on this basis would hold, the challengers will delay the projects by further delaying another required approval.

### **Further Reading**

We enclose with this letter a copy of our submission to the Queensland Resources Cabinet Committee dated October 2013, and whilst not specifically addressing the Water Act, the submission contains more in-depth discussion on these issues and emphasises the need for certainty for proponents.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Taylor', with a large, sweeping flourish at the end.

**Paul Taylor**

Executive General Manager  
Infrastructure and Approvals

**Encl.**

# **ATTACHMENT TO SUBMISSION NO. 54**



# **SUBMISSION TO QUEENSLAND RESOURCES CABINET COMMITTEE**

## **GVK Hancock Coal The Alpha Mine as a Case Study in Mining Approvals**

**Disclaimer**

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## 1. SUMMARY

GVK Hancock is seeking to open up the Galilee Basin by developing:

- the 30 Mtpa Alpha Coal mine;
- the 30 Mtpa Kevin's Corner Coal mine;
- a multi-user railway from the Galilee Basin to the Port of Abbot Point; and
- a coal terminal at the Port of Abbot Point.

Developing projects of this scale requires enormous investment in resources and capital running into billions of dollars. One of the most critical issues for ensuring the security of that investment is an underpinning certainty about the process and timing for the obtaining of key regulatory approvals such as the grant of a Mining Lease.

The primary concerns of GVK Hancock in relation to the regulatory approvals are that:

- Approvals needed for financial investment decision processes cannot be procured in a predictable and sensible time frame; and
- Conditions imposed on those approvals may cause operational or financial constraints to the extent that they seriously erode commercial viability.

The approval of concern, and the subject of this submission, is the grant of a Mining Lease that can be subjected to objections of questionable merit. As the Government is considering reform of the *Mineral Resources Act 1989*, GVK Hancock welcomes the opportunity to inform the Government of its experiences in the context of its work to secure the Mining Lease for the proposed Alpha Coal Mine.

This submission identifies areas needing legislative reform in order to provide proponents with the certainty of process and timing for the grant of a Mining Lease. The Government can contain the delay risks arising from prolonged and unmerited objections and litigation by:

1. Confining the current ability to raise global warming and Scope 3 emissions (e.g. the burning of coal by end users in another country) as areas of objection for a Mining Lease;
2. Clarifying the practice that make good obligations and agreements are matters related to water licences under the Water Act and are not relevant to whether a Mining Lease should be granted;
3. Recognising valid objectors and their objections have the right to be heard in the Land Court but there should be defined thresholds for supporting evidence;
4. Confining the findings of the Land Court from going to higher courts, and
5. Removing the ability for Ministerial decisions approving a Mining Lease or related Environmental Authority from being subjected to judicial review.

Given regulatory processes for mining projects in Queensland are all based in statute the Queensland Government has ability to implement reforms to remove the process risks described above.

GVK Hancock recognises the continuing efforts of the Government to streamline approval processes and reduce red tape. GVK Hancock acknowledges the need for fair processes to balance the interests of stakeholders. However the process must be capable of delivering certainty for proponents if the competition for investment and risk capital is to succeed.

## **2. BACKGROUND**

### **2.1. Importance of Mining**

Mining has been identified by the Queensland Government as one of the four pillars of the State's economy. The Government has said it is:

- (a) Committed "to growing the resource pillar of the Queensland economy"; and
- (b) Willing "to create a legislative and business environment that fosters resource sector growth."

According to the QRC, the mining sector in 2010-2011:

- (a) Delivered one in every five dollars to the state's economy through spending in Queensland;
- (b) Offered a \$25.2 billion stimulus, an increase of 13% from 2009-10; and
- (c) Accounted for one in eight jobs by using 0.09% of Queensland's land mass.

### **2.2. Australian Policy Framework**

Both the Australian and Queensland Governments seek to provide a policy framework that supports the development of the coal industry. In particular, they recognise the benefits in terms of employment and living standards that arise from exports such as coal.

As illustrated in Diagram 1 on the following page, coal ranked second by value (to iron ore) among Australian exports in the latest year for which data is available, 2011-12. Coal exports increased in that year by 9.3 per cent over the previous year, to a value of \$47.9 billion. However in 2009-10 the value of coal exports exceeded that of iron ore. If we go back one further year to 2008-09, coal was by far Australia's most important export, equivalent to 20 per cent of total Australian exports. Coal exports in that year were valued at \$54.7 billion, 60 per cent higher than the value of iron ore exports in that year and 14 per cent greater than the value of coal exports in 2011-12.<sup>1</sup>

Ministers at both the Commonwealth and State levels regularly make statements that indicate support for the development of the coal industry. This reflects the substantial contribution that the resources industry in general, of which coal is a key component, makes to the economy and to living standards.

Since coal mining constitutes one of the largest industries in Queensland and one which provides significant regional employment, it is not surprising that successive Governments are highly supportive of coal industry development. Queensland Government Ministers frequently make statements in support of the coal industry and its importance to the State. For example, an information paper recently published by the Queensland Department of Natural Resources and Mines states that:

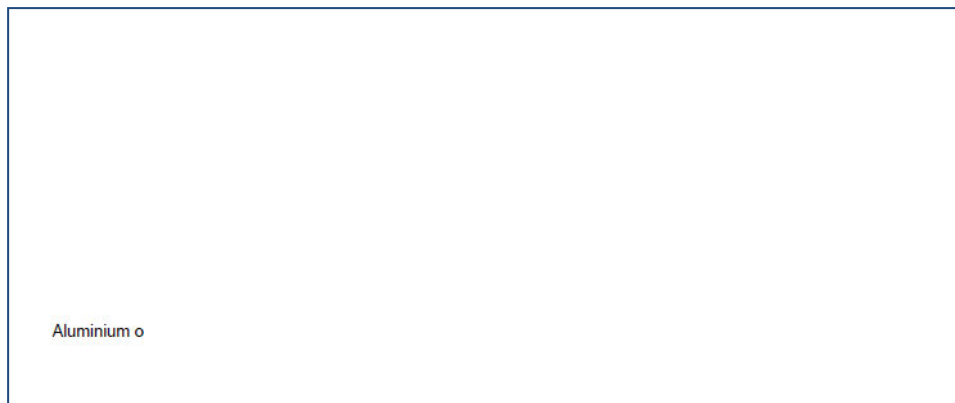
"To help meet increasing demand from international buyers, the Queensland Government is working with the coal industry and private enterprise to facilitate mine expansions, the development new coal mining projects and provision of adequate coal export infrastructure."

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<sup>1</sup> Department of Foreign Affairs and Trade, *Composition of Trade Australia, 2011-12*, Canberra, December 2012, page 3, <[www.dfat.gov.au/publications/stats-pubs/cot-fy-2011-12.pdf](http://www.dfat.gov.au/publications/stats-pubs/cot-fy-2011-12.pdf)>



Diagram 1: Australia's Top Ten Exports, 2009-10 to 2011-12 (\$ million)



Source: Department of Foreign Affairs and Trade, *Composition of Trade Australia, 2011-12*, page 3.

Although the Queensland Government has increased mining royalties, it is pursuing a regulatory and economic agenda directed towards supporting the resources sector. That agenda has involved:

- Passing legislation to reduce regulatory red-tape affecting the resources industry
- Identifying the resource industry as one of the 'four pillars' of the Queensland economy in the last State Budget and in proposed planning instruments
- Facilitating the expression of interest process for the potential staged expansion of coal handling facilities at Abbot Point
- Freezing coal mining royalties for 10 years.

The Government's response to the Office of Best Practice Regulation's report on reducing the burden of red tape and regulation is encouraging, and GVK Hancock is of the view that reforming the mining sector legislation is overdue and welcome.

### **Policy Framework for GHG Emissions**

Australia's obligations under the United Nations Framework Convention on Climate Change and the Kyoto protocol require the reporting of Greenhouse Gas (GHG) emissions. Importantly, it does not require a national Government to report third party or Scope 3 emissions that occur in other countries as a result of the use of material exported from the first country. Australia is not required to measure and report the emissions that occur in other national jurisdictions as a result of the combustion of coal exported from Queensland. Those emissions become Scope 1 or Scope 2 emissions in the country where the coal is combusted and therefore become the reporting responsibility of the country that imports and uses the coal. This point is apparently ignored by objectors to Australian coal mines.

In support of Australia's international obligations, the National Greenhouse and Energy Reporting Act (the NGER Act) requires business to report on GHG emissions above defined thresholds. Australia's policy approach applies to all major resource projects, and no Australian Government singles out the coal industry for special treatment. In fact, such an approach would be inconsistent with a policy approach relying, on the one hand, on broad, market driven mechanisms and, on the other, on positive measures to encourage investment in renewables, energy conservation and energy efficiency.

It is difficult for proponents of resources projects, particularly coal mines, to continue with substantial investments when avenues for legal challenges run in the opposite direction to Government policy.

### **2.3. GVK Project and Investment in Queensland**

The Galilee Basin has an enormous amount of mineral potential, particularly coal. That potential has not been realised yet because of the remoteness of the Basin, the lack of appropriate infrastructure (particularly rail) and the extremely high cost of developing the requisite infrastructure.

The current demand for good quality thermal coal, particularly from the growth areas markets in Asia, presents an outstanding opportunity to open up the Galilee Basin. GVK Hancock – which comprises Hancock Coal Pty Ltd, Hancock Coal Infrastructure Pty Ltd, Hancock Alpha West Pty Ltd, Hancock Galilee Pty Ltd and Hancock Kevin’s Corner Pty Ltd – proposes to take advantage of the opportunity.

In September 2011 GVK acquired the following interests from the Hancock Prospecting Group:

- (a) 79% of the proposed Alpha Coal Mine (which includes the proposed Alpha West Mine) – the Hancock Prospecting Group has retained 21% of those projects;
- (b) 100% of the proposed Kevin’s Corner Mine; and
- (c) 100% of the proposed railway and the Abbot Point coal export facility.

GVK Hancock is developing an integrated mine-rail-port Project with annual capacity of 60 million tonnes, with coal yield improvements possibly increasing that capacity to 64 Mt, which will comprise:

- (a) An open-cut coal mine of 30 Mtpa in the Galilee Basin (known as Alpha Coal Mine) - to be operated by Hancock Coal Pty Ltd;
- (b) An open-cut and underground coal mine of 30 Mtpa in the Galilee Basin (known as Kevin’s Corner Coal Mine) - to be operated by Hancock Galilee Pty Ltd;
- (c) A multi-user railway from the Galilee Basin to the Port of Abbot Point; and
- (d) A terminal at the Port of Abbot Point.

GVK Hancock’s railway will provide bulk haulage for customers, including other mine proponents in the Galilee Basin and the Bowen Basin. GVK Hancock’s multi-user railway will provide the critical rail infrastructure needed to open up the Galilee Basin to the resources industry and other industries.

#### **Capital Expenditures and Employment**

The estimated upfront capital cost for the Project is \$15.9 billion comprising:

- (a) \$5.8 billion for Alpha;
- (b) \$5.3 billion for Kevin’s Corner;
- (c) \$3.1 billion for the 500 kilometre railway; and
- (d) \$1.7 billion for the 60 Mtpa port facility.

The Project is anticipated to create 6,800 direct jobs during the construction period:

- (a) 2,450 for Alpha;
- (b) 2,000 for Kevin’s Corner;
- (c) 1,700 for the rail; and
- (d) 650 for the port.

The Project is anticipated to create a peak of 3,570 direct jobs during operations:

- (a) 1,700 for Alpha;
- (b) 1,600 for Kevin's Corner;
- (c) 270 for the rail and the port.

The coals from the mines have the following features which make them highly competitive:

- (a) It is the most extensively delineated deposit in the Galilee Basin;
- (b) A calorific value that is competitive with the Bowen and Surat Basins;
- (c) Superior grindability compared to the Surat Basin, which is readily milled by Asian users;
- (d) Low sulphur content with low sulphur dioxide (SO<sub>x</sub>) emissions; and
- (e) Ideal proximity to the Asia-Pacific and Indian markets.

Alpha and Kevin's Corner, which will be contiguous, have a current combined resource of 7.9 billion tonnes of JORC compliant coal, which is expected to increase with ongoing exploration and resource delineation. When fully operational, they will be two of the largest thermal coal mines in the world.

#### **Economic Benefits for Australia**

It is estimated that the flow-on economic benefits for Australia will be in the order of \$44 billion over the life of the two mines, comprising:

- (a) Federal taxes (including multipliers) of approximately \$27 billion;
- (b) Royalty payments of approximately \$16 billion;
- (c) State payroll taxes (including multipliers) of approximately \$800 million; and
- (d) Rental payments of approximately \$200 million for the two mines.

In addition to the above the proposed Alpha West mine (which is within the Alpha mine lease area) could contribute a further \$15 billion of flow-on benefits when it is developed and operational.

### 3. THE ALPHA COAL MINE

#### 3.1. Status of Regulatory Approvals

GVK Hancock has expended many millions of dollars to expedite the regulatory approvals for the Alpha Coal Mine, along with the other elements of the Project, over the past five years. The table below is a high level summary of the progress of key regulatory approvals for the Alpha Coal Mine.

Item	Milestone Description	Date
1	Initial Advice Statement submitted to Government	September 2008
2	State Government Significant Project Declaration	October 2008
3	Commonwealth Government Controlled Action Decision	January 2009
4	Coordinator General issues EIS Terms of Reference	June 2009
5	GVK Hancock submits EIS to Government	December 2010
6	GVK Hancock submits Supplementary EIS	August 2011
7	Coordinator General's Report Issued	May 2012
8	Commonwealth Government Environmental Approval	September 2012
9	Draft Mine Environmental Authority issued	December 2012
10	Alpha Coal Mine Objections Period Ends	February 2013
11	Finalisation of Land Court (including resolution of legal challenges)	<i>Unknown</i>
12	Grant of Mining Lease (including resolution of legal challenges)	<i>Unknown</i>

#### 3.2. Objections to the Mining Lease for Alpha Coal Mine

The proposed grant of the Mining Lease and the Environmental Authority for the Alpha Coal Mine was the subject of eight objections in early 2013, from four categories of objectors:

- (a) Two environmental activist groups – the Mackay Conservation Group and Coast and Country Association of Queensland (CCAQ);
- (b) An individual environmental activist;
- (c) An environmental activist who is also a landowner; and
- (d) Four landowners concerned about groundwater impacts upon their property.

Two land holders withdrew their objections after establishing make good agreements with the company using industry standard terms. The other two land holders are farther away (some 20 kilometres from the operating mine) and outside modelled groundwater drawdown impact zone.

GVK Hancock did not receive objections from any of the land holders within or immediately adjacent the mine lease area, or from any land holders within the modelled groundwater drawdown impact zone. This clearly indicates that the company's EIS and community consultations were generally accepted.

The remaining objectors proceeded to the Land Court. The Land Court hearings for the Alpha Coal Mine commenced in mid-September 2013 and the hearing of evidence finished in early October, with final submissions presented to the Court by all parties, including the DEHP, by the end of October.

### **3.3. Possible Legal Challenges after the Land Court**

Two objectors to the Alpha Coal Mine, CCAQ and a landowner activist, have filed notices of contention in the Land Court advising that they will ask the Land Court to:

- Overturn its earlier decision in the Wandoan Case and (1) decide that Scope 3 emissions are relevant to determining the environmental impacts of Alpha Mine; and (2) include the impact of Scope 3 emissions in their recommendations to the Environment and Mines Ministers; and
- Recommend to the Ministers that the Mining Lease and Environmental Authority are not granted until GVK Hancock has entered into make good agreements with potentially affected landowners. This was a recommendation in the Wandoan Case but it was subsequently ignored by the Minister for the Environment.

There are several potential legal challenges available to objectors in relation to these issues, including:

- An application for judicial review under Part 5 of the *Judicial Review Act 1991*; and
- An application for a declaration about the interpretation of the relevant legislation.

#### ***Time Frame for Land Court subsequent challenges***

An initial legal challenge could take up to one year based upon other similar cases. If that judgment went against the objectors, they could appeal to the Court of Appeal. That could result in another one year's delay. If the Court of Appeal decided against the objectors, they could apply to the High Court for special leave to appeal. If successful this could result in another one year's delay.

If an objector was successful in Court challenges, the Land Court might be required to reconsider the matter and deliver new recommendations, resulting in further delays.

#### ***Time Frame for Judicial Review of Subsequent Ministerial Decisions***

After any Land Court challenges the objectors could then challenge the decisions of the Ministers for Mines and Environment to the granting of the Mining Lease and Environmental Authority, respectively, by judicial review in the Supreme Court. Subsequent avenues for challenge are the Court of Appeal and possibly the High Court. If all avenues are pursued it could be another three years from the date the Minister makes their decision before all legal challenges in relation to that decision are finalised.

If an objector is successful with judicial review challenges the relevant Minister would be required to reconsider the matter and make a fresh decision, resulting in further delays.

#### ***Likely Consequences***

GVK Hancock cannot ascertain the course of action the activist groups may take but their stated intention to shut down the Galilee Coal Basin is clear, and if funding is available the legal challenges could run for several years. Given that the Alpha Coal Mine is the most advanced development in the Galilee Basin it is prudent to consider the serious consequences of such delay tactics and actions.

## **4. THE UNCERTAINTY FOR ALPHA COAL MINE**

### **4.1. The Activist Agenda and Resulting Investment Hurdles**

Activist groups have an agenda to amplify perceptions of environmental harm. An anti-coal movement operates in Australia to disrupt and delay key projects and infrastructure in order to gradually erode public and political support for the coal industry. This includes a master plan with overseas funding.

Widely circulated publications such as *Stopping the Australian Coal Export Boom*, November 2011, and Greenpeace's *Cooking the Climate Wrecking the Reef*, September 2012 are designed to enlist support for the prevention of the development of the Galilee Coal Basin. They aim to harness momentum from perceived community back lash to coal seam gas by targeting opportunities such as "water impacts".

As can be the case with minority interest groups the activists deliberately misconstrue the facts and mislead the public with inaccurate data. The large quantity of good quality Galilee Basin coal, with low ash, gas and sulphur values, is a substantially better environmental proposition when compared to exportable coals from competing countries such as Indonesia. The millions of underprivileged world citizens who have the right to choose to benefit from economic thermal energy are simply ignored.

The projects of GVK Hancock (and others) are faced with two unquantifiable factors having potential to prevent timely receipt of key regulatory approvals and continued high levels of capital investment:

- (a) Potential for vexatious and unnecessary legal challenges; and
- (b) Targeted delay and disruption in the current Land Court processes.

### **4.2. Issue One: Vexatious and Unnecessary Legal Challenges**

#### ***Vexatious legal challenges***

The clear aim of the activists is to delay major coal projects, like Wandoan, Alpha and Kevin's Corner through legal challenges to the regulatory approvals, increasing the costs and raising investor uncertainty, with the aim of eroding public and political support, making projects unviable and thus reducing the overall scale of the coal industry by hundreds of millions of tonnes per annum.

The activists organise landowner non-cooperation near mines and provide legal outreach to support landowners opposed to mines. This was apparent in the Land Court for the Alpha Coal Mine where:

- (a) The solicitors and barristers acting for CCAQ appeared to provide legal assistance to the land holder objectors during the hearings; and
- (b) Demonstrations organised outside the Land Court on 18 September 2013 were designed to show support for the landowners rather than the environmental objectors.

It might explain why GVK Hancock's negotiations with some landowners were unsuccessful.

#### ***Climate Change Objections***

It appears the activists have improved and refined their strategy for green field coal mines since the Wandoan case in 2011. Whilst CCAQ is challenging the Alpha Coal Mine on climate change with arguments identical to those used against the Wandoan Mine, they have submitted other objections including groundwater and economics. This variation in strategy aims to service the same aims such as delaying the regulatory progress and show casing climate change in the courts system.

### ***Lack of evidence of objectors***

Notwithstanding a Practice Direction of the Land Court where an objector may elect to be a level one objector, an objector whose decides to become a level one objector may elect not to prepare and lodge any expert or lay evidence and not to take any active role in the Land Court proceedings.

The effect is that if that objector is the sole objector the proponent is still required to defend its applications and the Land Court is still obliged to hear and consider the objections (which are really only assertions) – although the matter can be determined with the assistance of only written submissions from the company. This was the case with the South of Embley bauxite mining project.

The Land Court's recommendations for the South of Embley case have not been delivered some ten months after objections closed and there was only a single level one objector.

Several objectors originally objected to Alpha on surface water grounds, however there is now only one objector objecting to the mine on those grounds. That objector has provided no evidence (not even lay evidence) in support of the objections. To ensure that it is adequately protected, however, GVK Hancock engaged at considerable expense a surface water expert and a water quality expert to prepare expert reports and, if needed, give evidence at the trial.

Environmental activists are aware of process loopholes which provide opportunity for objections. They can delay a project on the basis of mere assertions, and take advantage of such loopholes.

### ***Make Good Agreements***

The grant of a Mining Lease and Environmental Authority does not entitle the holder to extract groundwater. Appropriate licenses are required under the Water Act (Qld) and the legislation provides for the decision maker to include, if considered necessary, make good conditions in the license. That has been a long held practice and in the case of the Alpha Coal Mine the Coordinator General made recommendations relating to approvals for the extraction and use of groundwater under the Water Act. Those recommendations are consistent with make good obligations for petroleum tenure holders.

In the case of Wandoan Mine several landowners objected to the grant the Environmental Authority until make good agreement were in place. This was included in the Land Court's recommendations however the Minister for the Environment granted the Environmental Authority without that requirement, reflecting the State's longstanding practice. That decision is the subject of a judicial review in the Supreme Court by a number of landowners. No hearing date is yet set for that matter.

The outcomes at Wandoan have created a concern, or expectation, in the minds of some landowners, that this issue must be addressed prior to the approval of a mine. This is despite the fact that this has never been past practice and those landowners' interests have been and continue to be adequately protected through the make good conditions imposed on water licenses granted to mining companies. Furthermore the Environmental Protection Act does not have the head of powers to include make good conditions in an Environmental Authority for a mining project.

GVK Hancock received four objections to Alpha Coal Mine from landowners concerned about their groundwater supplies. Two subsequently withdrew after entering into make good agreements. The two remaining landowners objected solely on the grounds that the approvals should not be granted until the company has entered into make good agreements with them. GVK Hancock's technical assessments and expert advice demonstrated that even in a worst case scenario it is extremely unlikely that either property would be impacted by the Alpha Coal Mine. Their claims for compensation were unsustainable (they were designed to force GVK Hancock to purchase the properties at a premium) and go beyond what is accepted practice for the terms of a make good agreement.

### **4.3. Issue Two: Delay in Land Court Proceedings**

There can be considerable delay in expediting objections through the Land Court. For example:

- (a) Wandoan - Despite requests for an expedited hearing of the objections, it was:
  - (i) Six months after the objections period before hearings commenced, and
  - (ii) Another seven months to receive recommendations after the hearing.
- (b) South of Embley - Despite a single level one objector and that objector choosing not to participate in the proceedings, the Land Court's recommendations have still not been delivered even though it's been:
  - (i) Almost six months since the Land Court reserved its judgment; and
  - (ii) Some ten months since objections closed.
- (c) Ebenezer - Although there is no public objections process in the Mineral Resources Act for the renewal of a Mining Lease, the Supreme Court held the applicants had standing to challenge the renewal of the Mining Lease:
  - (i) There was a delay of over 20 months from when the Mining Lease was renewed until the Land Court delivered its decision.

Furthermore, if the Land Court's recommendations are subject to legal challenges, the relevant Ministers may withhold granting the Mining Lease and Environmental Authority, causing more delay.

This scenario has arisen before. The relevant Ministers granted the Mining Lease and the Environmental Authority for additional surface area as part of the expansion of Xstrata's Newlands Mine, despite the Land and Resources Tribunal's recommendations being the subject of a judicial review application to the Supreme Court. The Supreme Court subsequently found the Tribunal had denied the objector procedural fairness and referred the matter back to the Tribunal for reconsideration.

The objector could then have successfully applied to the Supreme Court for a declaration that the grant of the Mining Lease and the Environmental Authority were invalid and should be revoked, however because the proponent had expended hundreds of millions of dollars developing the additional surface area, the Government acted by validating the grants by legislation.

The problem for GVK Hancock is that, as was ultimately the case with the Newlands Mine, GVK Hancock and its investors and financiers would have no certainty:

- (a) About the validity of its granted Mining Lease and the Environmental Authority; and
  - (b) That its prior investments (being very substantial and continually increasing) are not jeopardised and that the entire project is being made financially unviable,
- pending the finalisation of all legal challenges arising from Land Court proceedings.



## **5. RECTIFICATION OF PROCESS SHORTCOMINGS**

### **5.1. Examples of Previous Solutions**

Previous Governments have resolved process shortcomings for particular projects in the past. The solution has been for the State to legislatively intervene to clarify and resolve.

Queensland has enacted a number of special purpose Acts from at least the 1960s on to facilitate mining projects, including:

- (a) The *Central Queensland Coal Associates Agreement Act 1967* which was enacted to facilitate the opening up of the Bowen Basin by BMA's predecessors; and
- (b) Development of the Mt Isa mine; and
- (c) Development of the bauxite reserves near Weipa.

There have been numerous amendments to the Mineral Resources Act 1989 in more recent times to facilitate mining projects:

- (a) Removing Pechiney's mining lease for the Aurukun bauxite resources because of non-performance;
- (b) Granting Chalco the exclusive right to apply for a mineral development license and, later, a mining lease for the Aurukun bauxite resources;
- (c) Validating the grant of additional surface area for Xstrata's Newlands Mine after a successful judicial review resulted in the Land and Resources Tribunal's recommendations being revoked due to a breach of procedural fairness - which meant the grant of the additional surface area could be declared invalid by the Supreme Court at any time;
- (d) Ending Cherwell Creek's rights in relation to two mineral development licenses and granting BMA the right to apply for mining leases for infrastructure purposes over that same land for the Caval Ridge Mine despite BMA not holding underlying mining tenements; and
- (e) Inserting measures to underpin the future development of the Aurukun bauxite resource on Cape York.

### **5.2. Solution to Unnecessary Legal Challenges**

#### ***Climate Change Objections***

The Government should consider amending the Mineral Resources Act and the Environmental Protection Act to clarify that the direct and indirect environmental impacts of, and associated with, the transportation outside Queensland of the mineral to its ultimate destination, and its end use, are not relevant to the assessment of the impacts of a mine. Such amendments would:

- (a) Constrain objections on the grounds of Scope 3 emissions and related matters;
- (b) Be consistent with Australian policy and legislative frameworks such as the NGER Act; and
- (c) Remove the risk that the approval of mines could be delayed for several years while multiple avenues of challenge are pursued in the Courts.

### ***Objector's Supporting Evidence***

The Government should consider amending the Mineral Resources Act and the Environmental Protection Act to provide that if:

- (a) An objector fails to provide any evidence to the Land Court in support of their objections; or
- (b) The Land Court decides that an objector has failed to provide appropriate evidence to the Land Court in support of any ground of their objection,

then:

- (c) The Land Court and the Minister may not take into account those objections, or the relevant ground of objection, as the case may be; and
- (d) If the objector is the sole objector and fails to provide any evidence to the Land Court, the Land Court must immediately refer the applications to the relevant Ministers.

### ***Make Good Obligations***

Make Good obligations and agreements are matters related to water licences under the Water Act. The Government should consider amending the Mineral Resources Act and the Environmental Protection Act to clarify that make good obligations and agreements are not relevant to whether the mining leases should be granted. This would prevent make good obligations and agreements being a ground of objection.

## **5.3. Solution to Land Court Delays**

Whilst it is recognised there should be process for review, the current multiple and varied avenues for legal challenge that currently exist give rise to substantial uncertainty for proponents and investors.

The Government should consider confining the rights of objectors to be heard on their objections in the Land Court, and therefore, close statutory pathways to appeal against findings of the Land Court to higher courts.

### ***Minister's Decisions not subject to Judicial Review***

Further, the Government should consider removing the rights of objectors or other parties to seek judicial review of regulatory decisions at key points in the approvals process. This is particularly the case for objectors seeking judicial review of a decision to grant a mining lease or an environmental authority after a project has been through the EIS and related public comment processes and once objections have been through the Land Court process.