

Reply to: [REDACTED]
Legal Coordinator

[REDACTED]
30 September 2024

Queensland Law Reform Commission

Lodged online at

<https://www.qlrc.qld.gov.au/reviews/mining-lease-objections-processes-review/submission>

RE: Reforming processes to decide contested applications for mining leases under the *Mineral Resources Act 1989* and associated environmental authorities under the *Environmental Protection Act 1994*

This submission is in response to the Queensland Law Reform Commissions' review into reforming processes to decide contested applications for mining leases under the *Mineral Resources Act 1989* (Qld) and the associated environmental authorities under the *Environmental Protection Act 1994* (Qld). Specifically, we comment on the Queensland Law Reform Commission (QLRC) July 2024 *Consultation Paper – Reimagining decision-making processes for Queensland Mining*.

We welcome the opportunity to contribute to this review with our experience and perspective and to amplify the experiences of individuals and groups in our network. This submission is made with the support of the Australian Conservation Foundation, Clean Energy Finance and landholders Bruce Curry and Paola Cassoni, both of whom have experience with Land Court processes. We strongly support a number of changes to the mining objection process to increase accessibility and access to justice, to reduce confusion and to ensure that there is independent accountability in government decision making processes.

OVERVIEW OF OUR RECOMMENDATIONS

In summary, we make the following recommendations to the QLRC consultation on mining lease processes:

1. Amend the mining objection hearing process as proposed in Figure 3 of the QLRC consultation paper, ensuring that there are opportunities for merits appeal after a decision has been made by a decision maker.
2. Introduce a stay for commencement of activities under mining lease and environmental authority approvals, pending the outcome of any review. We recommend increased opportunities for early participation, prior to the submission of a mining lease or environmental authority application. We also strongly recommend increased and varied access to information, including through the use of online and in person information sessions.
3. We support the introduction of a statutory criterion requiring decision makers to consider the rights and interests of First Nations Peoples.
4. An adequate minimum standard for participation processes is required. If there is to be tailoring of the participation process, then tailoring must be for the purpose of providing for

participation additional to the minimum standard.

5. Create an information portal that is the central place for all information before a decision maker, and which includes information on public notification of projects.
6. There should be expanded methods of public notification, such as through subscriptions to email notifications, and disbursing information through a variety of additional channels. We recommend streamlining public notification and information provision for mining lease and environmental authorisation proposals, including via channels that do not rely on internet access.
7. We support amendments to the statutory criteria to require decision makers to consider public input and expert advice, including the creation of a new Independent Expert Advisory Panel.
8. Standing rules and access to appeals should be standardised so that it is clear to the public when participation in a process will result in the right to appeal a decision.
9. The public interest should be included in considerations that a decision maker should take into account when determining cost orders.
10. Decision makers should be able to amend conditions on appeal (including conditions of the Coordinator-General).
11. Limit proponents to the evidence in their application in an appeal process and allow objectors the opportunity to engage with experts to comment on materials and assist the court during the process.
12. Broader accessibility issues in accessing and effectively participating in the Land Court should be explored by the Commission and remedied.

DETAILED SUBMISSIONS

Amend the mining lease objection process

Parts of the current mining lease objection process, including where to find public notifications, can be confusing and inefficient.

As it currently stands, a mining lease and environmental authority are notified by publication on different websites, potentially at different times, for the same mine or mining activity. Once these are notified, the community has an opportunity to see the application and object to each of these processes. An objection to a mining lease or an environmental authority is then heard before the Land Court. The Land Court hears objections and then makes a recommendation to the decision maker, who will then make their final decision. This means that the Land Court does not engage in a merits appeal process in the proper sense. That is, they do not stand in the shoes of the decision maker and make a final decision. This severely restricts the usefulness of the process. Given that the Land Court only makes a recommendation, the current process does not effectively allow an appropriate appeal channel to test the merits and justice of government decision-making.

We support the proposed new process for mining lease objections, that includes public notification and information on mining leases and environmental authorities on the one website. Under the proposal, the public would participate in a consultation process and provide their views to the decision maker, who would make a decision based on the information before them. At that point, after a decision is made, there would be opportunity to seek review of a decision, on its merits, in the Land Court. The

new sequencing of this process will ensure that there are appropriate checks and balances on government decision making, placing the court in its proper place in our democratic processes. Such a process would also encourage better decision-making by government on the basis that the potential for decisions to be reviewed and tested in Court would be expected to lead to greater care being taken in the first instance. This would allow the Court to exercise its normal judicial function with a final determinative decision, rather than just making a recommendation to the decision maker as occurs currently. This will bring the Land Court's role into line with the decision-making processes in other jurisdictions and give people and communities affected by the impacts of mining access to justice.

Recommendation 1

Amend the mining objection hearing process as proposed in Figure 3 of the QLRC consultation paper, ensuring that there are opportunities for merits appeal after a decision has been made by a decision maker.

Commencement of approvals

Mining leases and environmental authorities need to have stay on commencement of approved activities until such time as a review of a decision is complete. This will avoid the need for parties to argue about enacting a stay before each Court appeal. It will also ensure that any review of a decision is a genuine merits appeal.

Recommendation 2

Introduce a stay for commencement of activities under mining lease and environmental authority approvals, pending the outcome of any review.

Effective public participation

Genuine and effect public participation is done early. Currently, public participation is generally limited to making submissions on a proposal that has largely been finalised. This means that consultation with the public, including directly affected communities, often feels ineffective or unlikely to be taken seriously, because all the decisions have effectively been made. Failure to engage local communities and informed members of the public about the potential impacts of a mining project can lead to significant impacts on threatened species of flora and fauna, ecological communities, First Nations heritage, and waterways. It also breeds cynicism about public consultation processes.

Accordingly, we recommend increased opportunities for the public to participate early in mining lease and environmental authority processes, that is, prior to the submission of an application.

In addition, to ensure that participation is open to a wide sector of the public, and to ensure greater accessibility of information, we recommend information sessions on proposals both online and in person, to allow the public to attend in ways most accessible to them. In addition, whilst community reference group options can be useful, we recommend against them where these may entrench any community politics, causing some members of the community to not be heard.

Recommendation 3

We recommend increased opportunities for early participation, prior to the submission of a mining lease or environmental authority application. We also strongly recommend increased and varied access to information, including through the use of online and in person information sessions.

First Nations Participation

We support the proposal for the introduction of a new statutory criterion to require decision makers to consider the rights and interests of First Nations Peoples. In addition to obtaining the advice of the Aboriginal and Torres Strait Islander Advisory Committee and by a member of the new Independent Expert Advisory Committee, we support additional resources being allocated by government to ensure full and meaningful participation by First Nations people mining-related decisions.

Recommendation 4

We support the introduction of a statutory criterion requiring decision makers to consider the rights and interests of First Nations Peoples.

Tailored participation processes

There needs to be certainty and consistency in participation processes for each mining project. Accordingly, we recommend a minimum, threshold standard for public participation processes and consultations. An adequate minimum standard will mean that the community will know and expect to receive information and to participate in certain ways. Lock the Gate is concerned that if all participation processes are tailored and there is no minimum standard, there is no certainty or clarity as to when they are being consulted and how, causing confusion in the community.

Depending on the location, it may be appropriate to tailor participation processes, but this should only occur with the result of greater opportunity, time, information and access for the community involved. Any tailoring could only be justified in specific circumstances to ensure information and processes over and above the minimum standard.

Recommendation 5

An adequate minimum standard for participation processes is introduced. If there is to be tailoring of the participation process, then this tailoring needs to be in addition to the minimum standard.

Information Hub and notice

Currently, information about projects and consultation processes are spread out across multiple government websites. In some instances, public notification and consultation materials are only found on a proponent's website and that in itself could be buried within subpages on that site. We've found ourselves in the situation where we have missed consultation periods because they were only notified on a proponent's website. The current status quo for public notifications is confusing and inaccessible.

In order for information to be accessible to the public, and to ensure genuine consultation with the

community, there needs to be one, central website with all information and notice of opportunities for community consultation listed. This website must include all information that is before the decision maker for a project, so that the community are equally informed. This is key for transparency in decision making.

There is already a significant power imbalance with respect to the public's ability to access information and participate in government processes. A central information hub is critical to levelling this playing field.

Recommendation 6

Create an information portal that is the central place for all information before a decision-maker, and includes information on public notification of projects.

Additional improvements to public notification and consideration by decision makers

Following on from recommendation 6, we consider further strong improvements to public notification are needed, beyond the centralising of information and notifications in one information portal. These improvements will ensure that the public are notified in a clear and timely manner that mining activities are being proposed that are likely to affect them, and provide accessible opportunities to participate, particularly for people who do not have access to the internet. In addition to the above, we suggest the following:

- The ability to subscribe to email notification for areas or types of mining of concern to community members. This will mean that the community do not have to pour over newspapers or websites daily to keep abreast of proposals;
- Notification in regional newspapers and the *Koori Mail*, to ensure reach and accessibility of information and opportunities to comment;
- Notification of proposals through the use of radio advertisements, alerting the public to a proposal that is on foot and open for consultation.

In addition, we recommend that notification of mining lease and environmental authorisations occur at the same time. This will reduce confusion about what is being applied for. Ideally, if notifications of mining leases and environmental authorisations are happening at the same time, adequate time is given for the community to understand how both proposals will work and to put in submissions accordingly.

Lastly, we support amendments to the statutory criteria to require decision makers to consider public input and expert advice, including the creation of a new Independent Expert Advisory Panel.

Recommendation 7

Increasing methods of public notification, such as through subscriptions to email notifications, and disbursing information through a variety of additional channels. We recommend streamlining mining lease and environmental authorisation proposals. We support amendments to statutory criteria to require decision makers to consider public input and expert advice, including the creation of a new Independent Expert Advisory Panel.

Streamlining standing rules

Currently standing rules are confusing. The process of determining whether a member of the public has the standing to appeal a decision should not be complicated – it reduces access to justice. Accordingly, we recommend streamlining standing rules, so that any submission to an Environmental Authorisation application or an Environmental Impact Statement process gives rise to standing to then appeal the decision on the Environmental Authorisation, rather than the current confusion created by only one of these processes leading to a right to be heard in the Land Court.

Recommendation 8

Streamline standing rules so that it is clear to the public when participation in a process will result in the right to appeal a decision.

Public interest considerations for costs

It is important to retain rules around each party paying their own costs with respect to merits review matters. However, we submit that the current cost rules be expanded to ensure consideration of the public interest if any potential cost orders are awarded. Whether or not a case is raised in the public interest is not a consideration when determining costs orders.

Recommendation 9

Include public interest in considerations that a decision maker can take into account when determining cost orders.

Coordinator-General conditions

Coordinator-General conditions are often imposed on all decision makers, and constrain independent bodies from making their own determinations. This is the case even when, for instance, the Land Court has updated information on appeal. It is important that a fresh decision maker, when making a decision on merits, is able to make decisions on conditions unconstrained by previous decision makers. Accordingly, we recommend that the Coordinator-General's conditions are no longer imposed on all decision makers and do not in any way constrain the Court from considering and providing for changes to conditions from the Coordinator-General where the Court is likely informed by more up to date and comprehensive information on appeal.

Recommendation 10

Decision makers are able to amend conditions on appeal (including conditions of the Coordinator-General).

Evidence of objectors

We support the proposal that proponents should be limited to the evidence in their applications in an appeals process, and should not be able to introduce new evidence in the appeal process. However, we

do not support a similar limitation of evidence for objectors, who often have very limited time to provide comment at submission stage. Objectors should be allowed to engage experts to critique the proponent's application materials and to assist the court during the appeal process.

Recommendation 11

Ensure proponents are limited to the evidence in their application in an appeal process. Allow objectors the opportunity to engage with experts to comment on materials and assist the court during the appeal process.

Broader Land Court accessibility issues

Once members of the public are in the Land Court, further access to justice issues arise. Transcripts of proceedings are incredibly expensive, and thus out of reach for general members of the public. One Lock the Gate supporter was quoted a roughly \$2,000 fee to obtain a transcript of proceedings – an amount completely outside of reach for this individual. Whilst there are provisions for fee waiver, there is often a delay in obtaining these transcripts compared to those who pay full fees (even though the transcript has been produced). This delay is an access to justice issue for people engaging in a hearing and needing to reference the transcript. The process of obtaining a fee waiver (that is, providing the requisite evidence) can be cumbersome and time consuming.

In addition, whilst each party typically pays its own costs in a Land Court proceeding, it is still quite a costly exercise for members of the public who are applicants. In the words of one landowner:

Even if the costs are rarely awarded to the 'winners' which usually are those with big pockets, it's still a great financial impediment to access the land court. In short, to find funds to fight the intruders and time to read the legislation is often what will stop landowners that file objections to mineral companies' impositions on their land, water and livelihoods. Rights are in themselves very limited in the Minerals Act. Back in 2014 there used to be an office in Toowoomba that was always as busy as, where landowners could find out for free what were their rights but Newman's pro-mining and pro-CSG regime took away the funds for the Farm and Rural Legal Service (Mining) Legal Aid Queensland. I would like to see such service back; we need better access to our rights. We can't keep going backwards.

Access to justice includes having representation in a court case if you require it - relying on private lawyers is often out of reach for landowners and other members of the public. Providing access to justice in this instance, to ensure an effective and efficient process, means having a legal service that people can approach to advise on their rights.

Recommendation 11

Broader accessibility issues in accessing and effectively participating in the Land Court are explored and remedied.

ABOUT LOCK THE GATE

Lock the Gate is a national grassroots organisation made up of over 120,000 supporters and more than 260 local groups who are concerned about the risks associated with coal mining, coal seam gas and fracking. These groups are located in all parts of Australia, including the Surat Basin and comprises farmers, First Nations Peoples, conservationists and urban residents.

We thank you for the opportunity to make these submissions and look forward to receipt of your response.

Yours sincerely,



National Co-coordinator
Lock the Gate Alliance Limited

Supporting organisations

Lock the Gate Alliance Ltd
Clean Energy Finance
Australian Conservation Foundation

Supporting landholders

Bruce Currie
Paola Cassoni