

**QUOTES FROM:** *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4) [2017] QLC24*

- quotes and information from the Land Court decision, identifying paragraphs of the judgement in [brackets] with emphasis added in underline.

**Key summary paragraph**

*“It is beyond doubt that the mining proposed by NAC in revised Stage 3 will cause disruptions to aquifers in the Acland region which will have an impact on nearby landholders, even though the state of the groundwater evidence is such, and the modelling in my view so imprecise, that the actual impact likely to occur to those nearby landholders cannot at this time be accurately forecast. I have indicated that I am not satisfied with the groundwater modelling undertaken by NAC to date. I have also indicated that I am not satisfied that the operations proposed by NAC meet all the objectors and principles of intergenerational equity. Further, I am not satisfied that the noise limits proposed by the CG for evening and night time operations of the revised Stage 3 are appropriate, causing me to recommend that the MLA not be granted as I am unable to recommended conditions inconsistent with the CG conditions.”* [1799]

**Groundwater impacts to adversely affect landholders of hundreds of years**

*“The principles of intergenerational equity are breached in at least one regard by the proposed revised Stage 3, with potential for groundwater impacts to adversely affect landholders in the vicinity of the mine for hundreds of years to come. This breach is sufficient to warrant rejection of the MLAs and draft EA applications”.* [14]

*“As regarding groundwater, a huge amount of evidence was before the Court. In key areas, New Acland Coal’s own experts agreed with major shortcomings of the current model. I was also highly concerned regarding the modelling of faulting and other aspects of the groundwater studies undertaken to date”.* [16]

*“I have been a member of the Queensland Judiciary for over seventeen years, and during that time I have heard expert evidence from a myriad of experts over many diverse fields of expertise. I can say with absolute certainty that never before in my experience on the bench have I heard an expert witness called by one party give evidence so telling against that party. I have no doubt that Mr Durick gave truthful testimony. I have no doubt that he understood absolutely his responsibility to assist the Court and not the party who called him.”* [1487]

*“Make good agreements cannot be a complete answer to this uncertainty. If one thing is clear from the mass of groundwater evidence, it is that proof of what actually happens to water under the ground in inherently difficult to determine even in circumstances where there is a large amount of geological evidence. This is particularly so in formations with the degree of faulting as found in the Acland area.*

Further, there is of course a relatively high concentration of landholder bores which rely upon groundwater from aquifers which will be impacted by NAC's revised Stage 3 operations." [1629]

"Taking the totality of the evidence into account, I am at a loss to see how a landholder could prove any loss of groundwater at one of their bores was caused directly and with certainty by NAC's revised Stage 3 mining operations, such is the high degree of uncertainty of the groundwater evidence. It would be an unacceptable situation, in my view, for NAC to simply to be able to say that it was not satisfied that a landholder lost drawdown in a bore due to NAC's mining operations, and then leave it to the landholder to undertake what would be very expensive litigation to establish otherwise." [1630]

### **Agricultural land significant and of intergenerational concern**

"I am satisfied that the evidence of [NAC expert witness] Mr Thompson during cross examination clearly shows his view that he accepted that the land around Acland was among the best 1.5% of agricultural land in Queensland. This certainly makes the land significant from an agricultural perspective" [1299].

"In my view, Mr Thompson's evidence is enough, of itself, to raise some issues of concern from an intergenerational equity perspective. Mr Thompson's evidence however does not need to be considered in a vacuum, as there is substantial evidence given from landholders in the area with multi-generational ties to the land as to their views on intergenerational equity." [1315]

### **Mining Company unfairly besmirched local objectors**

"NAC has sought to portray the local objectors as bigoted individuals who are not interested in facts, only in spreading misinformation about NAC. I do not believe this to be the case. As discussed previously in this decision, I find the majority of the objectors and the witnesses who supported them are honest, hardworking, regular folk whose character has been unfairly besmirched by NAC. In effect, NAC's treatment of objectors and their witnesses in these proceedings confirms their evidence that NAC has a tendency to treat anyone who disagrees with it in a dismissive and disrespectful manner." [1390]

"Again, it is hardly a stretch to understand why a neighbouring property, reliant on bore water such as is the case for Mr Wieck for his multi-million dollar automated dairying operation, would be concerned. It is also hardly surprising that those concerns would cause Mr Wieck and other local landholders to lodge objections. That however does not necessarily make them anti-coal/anti-development activists. In simple terms, I consider it more appropriate to collectively refer to the surrounding landholder objectors and members OCAA as landholders holding real concerns for their ability to continue their agricultural pursuits on their properties, both in the short

*term and from an intergenerational perspective, should revised Stage 3 proceed”*  
[1322]

### **Dust an ongoing issue, quite possibly in excess of approved limits**

*“I have no doubt that [residents] have been greatly inconvenienced and impacted by dust produced by the mine and given their evidence, it is quite possible EA limits with respect to dust and particulate matter have been exceeded”. [587]*

*“Evidence from nearby residents ...indicate that dust has been an ongoing issue for them since NAC began its open cut coal mining operations some 15 years ago. In fact there has been over 100 complaints recorded on NAC’s complaint’s register regarding dust and another 30 or so dust related complaints to EHP.” [580]*

*“In response to air quality and dust issues, NAC has monitored air quality and dust for 27 days over an 11 year period at locations around the mine.” [581]*

*“Because no regular monitoring has been undertaken by NAC in or around the mine site, it is impossible to confirm whether EA air quality limits have or have not been adhered to.” [589]*

*“Having sat through 98 days of hearing in this matter I have been impressed by the sincerity, acumen and demeanour of the Level 2 objectors who represented themselves at the trial. If they are an example of the Acland community, then I hold no concerns that community members would be unable to understand the significance of real time online monitoring data.” [610]*

### **Objectors treated very poorly by NAC and Regulator regarding noise**

*“The objectors.....have provided the literal ‘truck load’ of evidence and material detailing what they say to be unacceptable levels of noise generated by NAC’s operation of Stages 1 and 2” [721].*

*“My independent, considered view on what I have before me is consistent with the evidence given by the objectors that they have actually been treated very poorly by both NAC and the statutory party”. [721]*

*“This demonstrates what I can only call the folly of the regime under the current EA.” [743]*

*“An analogy to me is a person walking down say George Street in Brisbane on Tuesday night being robbed and making a complaint to the police that night that he was robbed, with the police attending George Street in the middle of the day, two days later and noting that no robbery was taking place. That situation is, of course, laughable, and I also would consider it absurd were it not for the fact, clear from the evidence before me, that that is the way it seems complaints have been dealt with under the current EA conditions.” [744]*

### **EIS significantly overestimated jobs**

*“Both experts agree that the I/O modelling significantly overestimated the economic benefits of revised Stage 3 and the jobs to be created. In fact most skilled jobs are drawn from other workplaces not unemployment lines”.* [899]

*“Consequently the high job figures predicted by the I/O modelling (EIS 3,550 and AEIS 1,556) are not supported by the current expert evidence....”* [900]

*“The only expert evidence we have.....indicates 680 jobs will be created by the project”.* [1038]

### **Job losses from delay squarely at the feet of NAC**

*“In case my comments above [regarding delay] can be taken as being either uncaring or dismissive (or both) of the plight of workers who may lose their jobs because of the depletion of coal in Stage 2, that is far from the case. The simple point that I am trying to make is that, in my view, and supported by the evidence before me, the underlying cause for any such job losses falls squarely at the feet of NAC.”* [130]

### **Significant loss of normally expected royalties, overall positive economic impact**

*“The vesting of coal resources in the state ensures the removal of its resources serves the best interests of Queensland. Royalties are effectively the price paid for the coal and the primary public benefit of allowing it to be mined.”*[1050]

*“I also note that with respect to royalties, 93% of the land to be mined under Stage 3 was granted under pre-1910 titles, hence NAC will only pay 7% of the usual royalties to the State. NAC will in effect pay the vast majority of its royalties (calculated at 7% of the value of the coal) to its related company APC. This is quite a saving for New Hope.”* [882]

*“The fact that 93% of the land to be mined in revised Stage 3 does not require royalties to be paid to the state (but rather to the land owners - primarily APC, a New Hope related company) is a relevant factor in determining on public interest grounds whether this coal mine extension should be approved or not. The loss of the normally expected royalties (estimated at approximately \$436 million over the life of the project) cannot be ignored and is significant.”* [1051]

*“In my view Dr Fahrer’s CBA correctly shows a positive economic impact of revised Stage 3.”* [985]

### **Destruction of the Town of Acland**

*“NAC commenced in 2007 an active policy to not only purchase as much of the property comprised in Acland as possible, but, after purchase, to remove the great bulk of buildings situated on the land purchased in Acland. So successful was NAC in its purchasing of properties that today only a few buildings remain at Acland”* [74]

*“The fact that Acland as a town in effect no longer exists can not be dismissed, in my view, as a simple sideline to the matters in dispute. There is no doubt that there is quite a level of angst between NAC and the objectors, and in my view that angst on the part of the objectors has been significantly contributed to by the actions of NAC in causing Acland to functionally no longer exist.” [75]*

### **Rigour of the Land Court Process**

The independent Land Court sifted through tens of thousands of pages of material, including 2,000 pages of submissions, almost 2,000 exhibits and 800 pages of handwritten judicial notes. 28 expert and 38 lay witnesses gave evidence on oath, subject to testing by experienced senior counsel over almost 100 days of hearing.<sup>1</sup>

The number of witnesses and hearing days were each the largest in the 120 year history of the Land Court.<sup>2</sup>

This analysis superseded the Coordinator General report in 2014:

*“CG evaluation of the EIS and AEIS was no doubt thorough but it was not as thorough as the evaluation of those documents in the court proceedings before me. Nor did the CG have the assistance of expert opinion tested by cross-examination. Consequently what I find to be errors in expert reports and modelling in many vital areas such as water, noise and dust were only ascertained as part of the Land Court proceedings and not discovered by the CG in his evaluation process.” [190]*

It also superseded the most recent advice of the federal Independent Expert Scientific Committee, relied on by the federal government for approval:

*“As regarding groundwater, a huge amount of evidence was before the Court. In key areas NAC’s own experts agreed with major shortcomings of the current model. I was also highly concerned regarding the modelling of faulting and other aspects of the groundwater studies undertaken to date. These issues have not been answered by the 2016 IESC Advice for reasons including the unfortunate fact that the IESC did not have the advantage of the material before the Court on groundwater. Groundwater considerations are such that the revised Stage 3 project should not proceed given the risks to the surrounding landholders and the poor state of the current model.”[16]*

After such scrutiny the Land Court stated: *“I can only say this: I am the only person who has physically been present for every moment of every piece of evidence throughout this entire hearing. I have taken into account all of the evidence that has been placed before me. I have considered all of the submissions. I have done my best to assess all of the evidence provided to the Court by the myriad of witnesses, both lay and expert.”[37]*

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<sup>1</sup>See, for example, paras [19], [36], [87], [97], [107], [202] and [203].

<sup>2</sup> Paragraph [202].