# ACLAND REFUSAL: WEIGHT OF HISTORY FALLS ON QUEENSLAND GOVERNMENT

*EDO Qld research into previous Queensland Land Court decisions shows that the recommendation to refuse the Acland Stage 3 mine expansion is the first outright mine refusal from the Court, after a contested hearing, in a decade.*

Furthermore, the research did not find one example over the last 10 years where the Queensland Government did not follow a Land Court recommendation to approve a mine.

Accordingly, history shows that it would be highly unusual for the Queensland Government to depart from a Land Court recommendation. To do so in one of the few cases where a refusal was recommended, particularly where groundwater resources are at risk, would be highly inconsistent with previous decisions on mine applications.

## BACKGROUND

On 31 May 2017, the Queensland Land Court recommended that the Stage 3 mine expansion of the New Acland Coal Mine be rejected, to the relief of farmers and landholders on the Darling Downs.

New research by EDO Qld shows this is an extremely rare decision for the Land Court. It is certainly a recommendation that the community, particularly the Oakey Coal Action Alliance which was involved in bringing the action, is expecting the Queensland Government to respect.

## ANALYSIS

Community lawyers at EDO Qld have reviewed the public database of Land Court decisions and compared it to the public registers of environmental authorities and mining leases.

Our research shows that, in the last 10 years, the Land Court has made more than 300 recommendations over mining leases under the Environmental Protection Act 1994 (Qld) and the Mineral Resources Act 1989 (Qld).

Many of these recommendations were not made in response to community objections, but instead in relation to automatic referrals from the department to the Land Court which were a feature of the system until 2010.

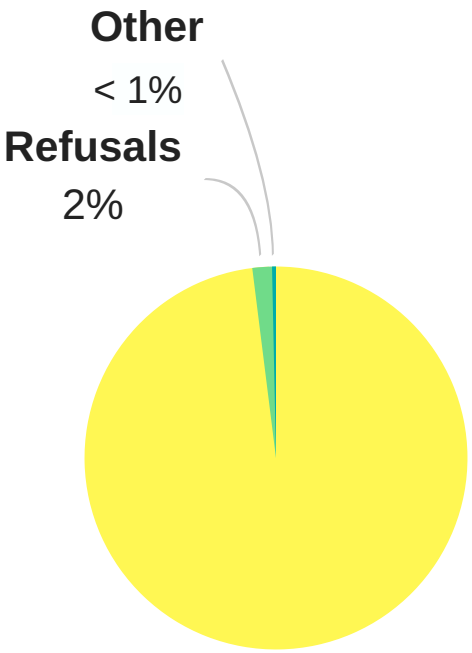
EDO Qld. Environmental Defenders Office

EDO Qld research into Queensland Land Court recommendations shows the recommendation to refuse New Acland Stage 3 is the first outright mine refusal from the Court, after a contested hearing, in a decade.

Out of the Court's recommendations during this time and under these Acts, we found:

- Over 98% of recommendations were for approval. Less than 2% have been to recommend a project be refused.
- The Court's recommendation in relation to the Acland Stage 3 Expansion is the only instance we could locate where the Court has made an outright recommendation of refusal after a contested hearing.
- 90% of recommendations were for approval without any changes to conditions, and 8% have been for approval with additional or modified conditions.
- The majority of recommendations have been followed by the State Government. In fact, we could not locate a single instance of a recommendation of approval not being followed.

As this chart shows, refusal recommendations from the Land Court are incredibly rare. The Acland case represents the first ever outright recommendation to refuse a mine from a contested Court hearing in a decade.




**Breakdown of Land Court mining lease recommendations since 2007**

## COMMUNITY OBJECTION RIGHTS

The role of public consultation and independent arbitration by a court in improving decision making, and safeguarding against corruption, is well accepted [1]. This level of public review is particularly important for decisions which impact on our shared environment and involve the sale of State assets such as our mineral resources.

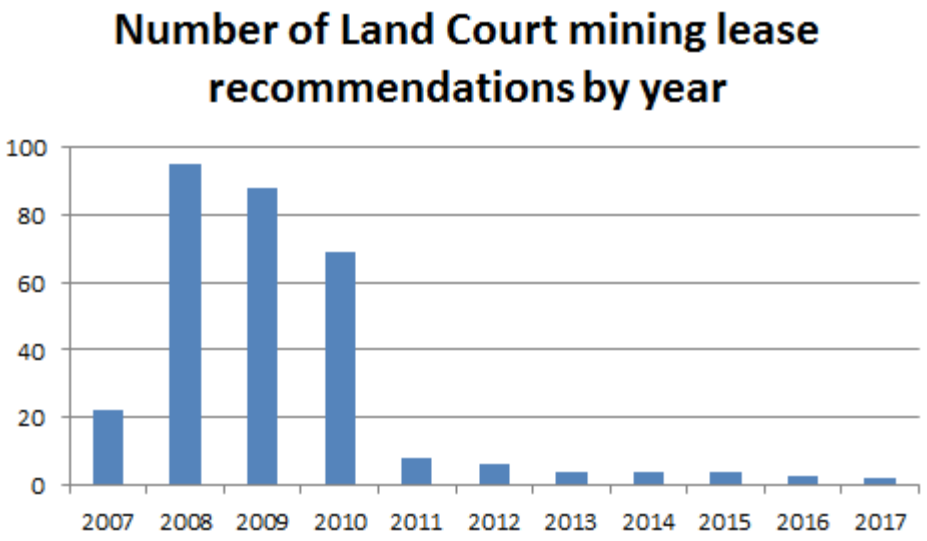
Numerous enquiries have confirmed that there is no evidence that objection rights to mines have been abused [2]. The only objector found to be vexatious in the Land Court was a commercial competitor [3].

Furthermore, EDO Qld research shows that the number of mining leases referred to, and decided by, the Land Court has dramatically declined in recent years from a peak of 95 in 2008. This has been affected, to a large extent, by the removal of automatic referrals (which existed until 2010).

The former Government stripped away landholder and community objection rights to mines on major projects, to the outrage of the community. These objection rights were restored by the current Government in the public interest so that costs and benefits of projects with large community impacts could be tested.

EDO Qld. Environmental Defenders Office

EDO Qld research into Queensland Land Court recommendations shows the recommendation to refuse New Acland Stage 3 is the first outright mine refusal from the Court, after a contested hearing, in a decade.




It was under this restored right that the Oakey Coal Action Alliance brought its objection to the New Acland expansion in the Land Court. If the Queensland Government was to now ignore this rare recommendation of the Land Court, it would:

- undermine the tradition of the QLD Government respecting the Land Court's recommendations; and
- be at odds with the spirit of the Government recognising the importance of community objection rights.

## References:

[1]
Parliament of Australia, 'Citizens' engagement in policymaking and the design of public services', Research Paper No. 1, 2011-2012. http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1112/12rp01; NSW Independent Commission Against Corruption report, Anti-corruption safeguards and the NSW planning system (February 2012), p 22 http://www.icac.nsw.gov.au/media-centre/media-releases/article/4023; Productivity Commission NSW, Major Project Development Assessment Processes (2013), p 274, http://www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf ; B.J. Preston, 'Third Party Appeals in Environmental Law Matters in New South Wales' (1986) 60 Australian Law Journal 215, 221. A. Finanzio, 'Public Participation, Transparency and Accountability – Essential Ingredients of good Decision Making' (2015) 2(1) Australian Environmental Law Digest 3, 3. Preston B and Smith J, "Legislation needed for an effective Court" in Promises, Perception, Problems and Remedies, The Land and Environment Court and Environmental Law 1979-1999, Conference Proceedings, Nature Conservation Council of NSW, 1999, at 107. Judge Christine Trenorden, 'Third-Party Appeal Rights: Past and Future' (Paper presented at Town Planning Law Conference, Western Australia, 16 November 2009) http://www.sat.justice.wa.gov.au/_files/10_Hon_Judge_Christine_Trenorden_Presentation.pdf ; Stephen Willey, 'Planning Appeals: Are Third Party Rights Legitimate? The Case Study of Victoria, Australia' (September 2006) 24(3) Urban Policy and Research 369–389; Preston B and Smith J, "Legislation needed for an effective Court" in Promises, Perception, Problems and Remedies, The Land and Environment Court and Environmental Law 1979-1999, Conference Proceedings, Nature Conservation Council of NSW, 1999, at 107

EDO Qld. Environmental Defenders Office

EDO Qld research into Queensland Land Court recommendations shows the recommendation to refuse New Acland Stage 3 is the first outright mine refusal from the Court, after a contested hearing, in a decade.

[2]
Agriculture, Resources and Environment Committee, Mineral and Energy Resources (Common Provisions) Bill 2014, Report No. 46, September 2014, 15, http://www.parliament.qld.gov.au/documents/committees/AREC/2014/24-MinEngResBill/rpt-main.pdf ; Infrastructure, Planning and Natural Resources Committee, Mineral and Other Legislation Amendment Bill 2016, Report No. 26, 55th Parliament (May 2016), 17.; Productivity Commission Research Report, Major Project Development Assessment Processes, November 2013, 277; Queensland Parliamentary Library on request of the former Agriculture, Resources and Environment Committee in their inquiry into the Mineral and Energy Resources (Common Provisions) Bill 2014. As referred to by then Member for South Brisbane Ms Jackie Trad in the transcript to the second reading speech of the Mineral and Energy Resources (Common Provisions) Bill 2014, Record of Proceedings, First Session of the Fifty-Fourth Parliament, 9 September 2014, 3024, available online here: https://www.parliament.qld.gov.au/documents/hansard/2014/2014_09_09_WEEKLY.pdf .

[3]
Ralph DeLacey & Anor v Kagara Pty Ltd [2007] QLC 0137.

The Acland community celebrates outside the Queensland Land Court after their court win, 31 May 2017

EDO Qld.
Environmental Defenders Office

EDO Qld research into Queensland Land Court recommendations shows the recommendation to refuse New Acland Stage 3 is the first outright mine refusal from the Court, after a contested hearing, in a decade.