



Environmental Defenders Office

Case Summary of *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] [2022] QLC 21

On Friday 25 November 2022, the Queensland Land Court made a landmark decision, delivered by Land Court President Fleur Kingham recommending that Waratah Coal Pty Ltd's (**Waratah**) application for a mining lease (**ML**)¹ and an environmental authority (**EA**)² for the Galilee Coal Project (the **Project**) be refused on public interest and human rights grounds relating to climate change and the destruction of the Bimblebox Nature Refuge. The approvals would have allowed Waratah to mine thermal coal in the Galilee Basin, contributing to the emission of more than two billion tonnes of greenhouse gases.

Within the Galilee Basin on Jagalingou Country is the Bimblebox Nature Refuge, a protected area home to 668 species of native plants and animals. The Environmental Defenders Office Ltd (**EDO**) assisted The Bimblebox Alliance Inc (**TBA**), a conservationist group of landholders, and Youth Verdict Ltd (**YV**), a First Nations-led group of young Queenslanders in challenging the Waratah Coal Project. For the first time in a mining objection hearing, on-Country evidence was heard by the Land Court across Gimuy (Cairns) and Zenadth Kes (the Torres Strait) according to traditional customs and laws.³ Evidence was led by First Nations witnesses on how climate change is adversely impacting on their traditional Lands, Seas and culture.⁴

President Kingham considered the public interest of the Project in terms of its contribution to climate change. The precautionary principle and intergenerational equity were key considerations in her Honour's finding that the threat of serious or irreversible environmental harm posed an unacceptable risk to present and future generations. President Kingham's ultimate conclusion was that the economic and social benefits of the Project do not outweigh the ecological and climate change costs.⁵ Notably, Her Honour rejected the 'perfect substitution argument', that if this mining project does not go ahead, another will. This is a significant departure from previous mining objection hearings, including the Carmichael Coal (Adani) Mine Case.

President Kingham found that the Project would limit several human rights, namely the right to property, privacy and home for the owners of Bimblebox, and in relation to climate change, the cultural rights of First Nations peoples, the rights of children, the right to property and to privacy and home, the right to enjoy human rights equally and the right to life.⁶ This limit on human rights

¹ An ML is applied for under the *Mineral Resources Act 1989* (Qld).

² An EA is applied for under the *Environmental Protection Act 1994* (Qld).

³ *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 5)* [2022] QLC 4.

⁴ *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 at [631].

⁵ [1287].

⁶ [44].

was found to be not reasonable and demonstrably justified and that the protection of human rights ‘weighs more heavily in the balance than the economic benefits’ of the Project.⁷

In 2020, Waratah Coal applied to have the human rights objections struck out on the basis that only individuals have standing in relation to the *Human Rights Act 2019* (Qld) (the Act) to challenge mining projects, not ‘incorporated entities’.⁸ They further argued that a recommendation of the Land Court does not comprise a ‘decision’ for the purposes of administrative review and that the Land Court does not have administrative capacity within the meaning of section 9(4)(b) of the Act. In the 2020 decision, it was decided that the Land Court does have administrative capacity and that it must act and make decisions in a way that is compatible with human rights under the Act. This will likely form the grounds of Waratah Coal’s appeal, in addition to the argument that public interest considerations of environmental harm in mining objection hearings are not within the Land Court’s jurisdiction.

Being a merits review, the Land court performs an administrative function by making its recommendation of refusal for the EA and ML to the final decision-makers, the Minister for Resources (on the ML) and the Chief Executive of the Department of Environment and Science (on the EA). This recommendation must be taken into account by the relevant authorities. Significantly, this case makes legal history in setting an important legal precedent in Queensland that will allow other mining projects to be challenged on public interest and human rights grounds and places the First Law and culture of First Nations people at the forefront of environmental decision making where it belongs.

⁷ [45].

⁸ *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33.