



# Environmental Defenders Office

## An update on the Land Court hearing

Waratah Coal's proposed 40 mtpa coal mine has been challenged by Youth Verdict Ltd and The Bimblebox Alliance Inc. over 7 epic weeks of evidence and site inspections – across Brisbane, the Bimblebox Nature Refuge in Central Queensland, Gimuy (Cairns) and Zenadth Kes (Torres Strait Islands).

The final submissions were filed by Waratah Coal Pty Ltd (Waratah) in the Land Court on Friday, 26 August 2022 – nearly three years after Youth Verdict Ltd and The Bimblebox Alliance Inc first made objections to the applications for a mining lease and environmental authority. The parties now await the Land Court's recommendation whether to approve or refuse those applications.

Below are some of the highlights, and the twists and turns, along the way.

### The human rights objections

- For the first time in a mining objections hearing, YV and TBA made objections on the basis that the approvals would unjustifiably limit the human rights of Queenslanders, under the *Human Rights Act 2019* (Qld), including the right to life, the rights of children, the right to be treated equally before the law, the right to property and privacy, and importantly, the rights to culture, for First Nations peoples.
- Objections were also made on the basis that the proposed project would destroy the biodiversity values of the Bimblebox Nature Refuge, amongst other things.
- In July 2020, Waratah applied to have YV and TBA's human rights objections struck out. In [Waratah Coal Pty Ltd v Youth Verdict Ltd](#) [2020] QLC 33, the Land Court rejected that application, finding that it must consider human rights, and cannot act or make a decision in a way that is not compatible with human rights.

### The changes to the mine plan

- In April 2021, Waratah advised the parties that it no longer intends to undertake open cut mining on Bimblebox but intends to retain the proposed underground mining. YV and TBA argued that the revisions to the mine plan amount to a substantially and materially different project to the one applied for, and the one YV and TBA designed their objections to respond to, and the Court lacks jurisdiction to make recommendations about it.
- Ultimately, in [Waratah Coal Pty Ltd v Youth Verdict Ltd \(No. 3\)](#) [2021] QLC 36, the Land Court found that it can and should hear the applications and objections based on the revised mine plan. However, it was acknowledged that a change to a proposed project could result in a project that is so fundamentally different that it amounts to a different application, and in those circumstances could not be heard by the Court.

### The evidence before the Court

#### Expert witnesses

- The parties collectively nominated 21 experts to give evidence to the Land Court. There were joint reports (prepared by multiple experts with similar expertise) on climate change, energy markets and policy, economics, subsidence, ecology and biodiversity offsets, and individual

reports on the interrelationships between climate change and public health, and actuarial science, as well as direct impacts reports on noise, air quality, surface water, groundwater, soil and rehabilitation, and social impacts.

- The written reports were expanded by concurrent evidence sessions (multiple experts being asked questions at the same time) and individual cross-examinations during the six weeks of hearing.

#### Lay witnesses

- YV and TBA filed six written statements from lay witnesses uniquely positioned to provide evidence to the Court about Bimblebox Nature Refuge, including its history and context, its management as an agricultural property with conservation priorities, its scientific and educational value, and its cultural contributions to Queensland. The witnesses were subject to little or no cross examination on those written statements.

#### First Nations witnesses

- YV and TBA called five First Nations witnesses to give evidence to the Land Court and drafted a proposed First Law Protocol, for the way in which that evidence should be received: [available here](#).
- The parties reached agreement on a set of orders to give effect to some of those protocols but Waratah opposed YV and TBA's proposal that the evidence of the First Nations witnesses be heard on Country, in the presence of members of the community. While site inspections are a routine feature of mining objections hearings, taking on Country evidence had not been done before.
- In an historic outcome for environmental litigation in Queensland, YV and TBA were successful in their application to have the Court hear evidence on Country. The Court found in [Waratah Coal Pty Ltd v Youth Verdict Ltd \(No 5\) \[2022\] QLC 4](#) that it would be unlawful "to conduct this hearing in a way that is not compatible with human rights" and that refusing the witnesses' request to have the evidence heard in the way that is most culturally appropriate "would limit their ability to enjoy and maintain their cultural heritage, specifically about how traditional knowledge is imparted."
- The Court also noted that the Human Rights Act specifically protects "the rights of Aboriginal and Torres Strait Islander peoples to do specified things *with other members of their community*", and so the Court would "be assisted in its evaluative function by seeing and hearing this evidence being given in that community."
- From 17 May 2022 to 19 May 2022, the Court heard evidence on Erub (Darnley Island) in Zenadth Kes (Torres Strait) from the Gutchen family – primarily Uncle Kapua and Lala Gutchen of the Meuram tribe. The Court made audio recordings of the evidence given on both Land and Sea Country. On 20 May 2022, the Court travelled from Erub to Poruma (Coconut Island) to hear evidence from Florence and Lala Gutchen of the Gau tribe.
- On 31 May 2022, the Court travelled to Gimuy (Cairns), part of the Yidinji Nation, and heard evidence from Jiritju Fourmile, a Gimuy Walubara man, at six different sites.
- Uncle Harold Ludwick, a Bulgun Warra man of the Guugu Yimidhurr Nation (west of Cooktown) chose to give written, audio and video evidence.

#### **Closing submissions**

- On 15 June 2022, YV and TBA filed their closing submissions, totalling 364 pages and traversing the statutory scheme, the values of and impacts to Bimblebox, state-wide impacts

from greenhouse gas emissions, the purported economic benefits of the proposed project and limitations on human rights, as well as biodiversity offsets, carbon capture and storage, and the coal market substitution argument. In those submissions, YV and TBA invite the Court to listen back to the evidence given on Country. Active objector, John Brinnand, also filed his closing submissions.

- A full copy of the written submissions is [available here](#).
- The objectors' oral closing submissions were delivered in Court from 16 to 17 June 2022, with the Statutory Party and Waratah responding in full by 1 August 2022 (Waratah's closing submissions totalled 712 pages). Following a reply from YV and TBA, and a further response by Waratah, the hearing and submissions concluded on 26 August 2022. The decision now rests with the Land Court.