

**IN THE WARDEN'S COURT OF QUEENSLAND  
HELD AT BLACKWATER.**

**REPORT AND RECOMMENDATION OF WARDEN PURSUANT TO  
SECTION 269 AND 270 OF THE MINERAL RESOURCES ACT 1989.**

**IN THE MATTER OF:** RE-HEARING OF APPLICATION FOR MINING LEASE  
NUMBER 70139 IN THE EMERALD MINING DISTRICT.

**BEFORE:** L P VERRA ACTING WARDEN.

**APPLICANT:** MR P AMBROSE, INSTRUCTED BY CLAYTON UTZ,  
SOLICITORS, FOR SOUTH BLACKWATER COAL  
LIMITED.

**OBJECTOR:** MR J BATCH, INSTRUCTED BY REES R AND SYDNEY  
JONES SOLICITORS, FOR LLOYD EDWARD CHARLES  
WALL.

**CATCHWORDS:** LEASE APPLICATION – RE-HEARING – COAL –  
946 HECTARES – “BIAS” – NON CONSENT OF  
EXCLUSION ZONE – WEED CONTROL –  
REHABILITATION OF EROSION AND BORE HOLES –  
PAST PERFORMANCE – GROUND WATER – EMOS –  
POSITION PAPER – DISCUSSION PAPER OR DRAFT  
POLICY REGISTER NOT RELEVANT – CONDITIONS  
FOR CONSIDERATION

*Mineral Resources Act 1989*

**REPORT:**

**Background**

The application for mining lease 70139 is made under section 232 of Part 7 of the Mineral Resources Act 1989 (the Act) for the purpose of mining for coal. The area sought is 946.20 hectares and is situated on Lot 13 Plan WNA75 being part of GHFL 37/3668, County of Wooroona, Parish of Toprain AND Lot 2237 Plan PH 1600, County of Humboldt, Parish of Kenmare. The general locality of the area applied for is 52 kilometres south of Blackwater. The name of the lease is “South Marshmead” and is an extension in a southerly direction of the ongoing South Blackwater mining project. Power to grant the lease is vested in the Governor in Council ( s.234) after recommendation by the Minister (s.271). All minerals are the property of the Crown (s.8). The grant of the lease does not create any estate or interest in the land (s.10), however there is power to determine title to land (s.363).

The Application was lodged at the office of the Mining Registrar at Emerald on 22 April 1996 and a Certificate of Application was issued on 22 April 1996 (s.252(1)) setting the last date for

receipt of objections as 3 June 1996 (s.252(2)). The sole objection was lodged by Mr Wall on 31 May 1996 (s.260). The Certificate of Application and the original Form of Objection are Ex.8 in the re-hearing.

Pursuant to Directions hearings, the Amended Grounds of Objection (which contain the original Form of Objection as Annexure "A") was filed in the Brisbane Registry on 9 April 1998 (Ex.30 re-hearing) and the relevant Environmental Management Overview Strategy (EMOS) was agreed upon and is to be found at ENAP 4 to Ex.26 in the re-hearing.

The original hearing took place at Emerald on 16 September 1996, 14 and 15 October 1996 and at Brisbane on 25 October 1996 before Mr Windridge, Warden. The Report and Recommendation that the lease be granted was delivered on 16 January 1997.

An application by Mr Wall for Statutory Review in the Supreme Court at Rockhampton was dismissed on 29 April 1997 (ENAP 6 to Ex.26). That decision was the subject of an appeal by Mr Wall to the Court of Appeal and in a judgment delivered on 11 November 1997, the appeal was allowed (Ex.53). The Recommendation of Warden Windridge was quashed and a re-hearing before another Warden or Acting Warden was ordered. It was further ordered that the evidence given and tendered at the original hearing may be considered as part of the material in the re-hearing. Subsequently, at a Directions Hearing before myself at Brisbane on 30 January 1998, it was agreed that such evidence be admitted as evidence in the re-hearing and exhibits 1-16 from the original hearing are the same exhibit numbers in the re-hearing. The transcript of the original hearing is exhibit 27.

In the Court of Appeal Moynihan and Ambrose JJ noted in their joint judgment - "Although the proceedings in the Warden's Court and before the primary judge were wide ranging, this appeal falls to be disposed of on a narrow basis" (p.2 - Ex.53). That narrow basis was as stated by Pincus J in his judgment - "The appeal concerns two of those grounds, numbers 2 headed Excessive Area and 4 headed Spread of Noxious Weeds" (pp.1 & 2 - Ex.53). The Amended Grounds of Objection abandoned the "Excessive Area" ground of objection. Even though the exhibits and transcript of the original hearing formed part of the evidence at the re-hearing, the volume of evidence presented in the re-hearing far exceeded that of the original hearing. As Mr Ambrose noted in his opening - "the objector did not want the rehearing to be limited merely to be giving..to have afforded him an opportunity to be heard on those two matters alone...He wanted the opportunity to be heard on any matter the subject of the original objection and any new objection he wished to make..so that this rehearing is wide open." (t/s p.6).

The re-hearing took place at Blackwater from 20-23 April 1998, with an inspection taking place on 22 April 1998 in the presence of Mr Wall and other representatives of both the applicant company and Mr Wall. M/s Proposch, an Environmental Officer with the DME also attended the inspection. A schedule of inspection points forms part of the evidence (Ex.56).

Prior to my handing down this Report and Recommendation, an application was lodged by South Blackwater Coal Limited (SBCL) at the Brisbane Registry on 28 July 1998 applying for the re-

hearing to be relisted for such further evidence and submissions as may be allowed including the evidence of Megan-Anne Proposch to be called by the Applicant as a witness. (Ex.81). That application was set for hearing on 11 August 1998 and at the hearing, the objector made a cross application that I disqualify myself on the grounds of reasonable apprehension of bias. (Ex.83). The applications were treated as a continuation of the re-hearing and exhibit 74 and subsequent exhibits relate to these applications, which were heard together. Following a statement from the bench by myself, no further evidence was called and the application for disqualification was continued. The application to disqualify was dismissed and written reasons for that decision were handed down on 9 September 1998 and have been admitted as exhibit 90 for ease of reference.

### **Grounds of Objection**

In the opening paragraph of his Amended Grounds Of Objection, Mr. Wall states - "I repeat and rely on my grounds of objection, and the facts and circumstances thereof, in my original form of objection of May 1996 (a true copy of which is annexure A hereto), and do not withdraw or abandon any of my original objection except Ground no.1 'Late Lodgement of Application', Ground no.2 'Excessive Area' and Ground no.8 'Starting Date Not Given'. Apart from such express abandonment, this new objection is made in amplification and extension of my original objection." During the re-hearing Ground 5.11 (information regarding the 'out-of-pit spoil dumps') of the Amended Grounds of Objection was formally abandoned. (t/s p.614).

The Amended Grounds of Objection appear under the following headings -

1. RESTRICTED LAND
2. SPREAD OF NOXIOUS WEEDS
3. REPLACEMENT WATER
4. UNSATISFACTORY PAST PERFORMANCE
5. NADEQUATE INFORMATION
6. LOSS OF GROUNDWATER
7. LAND USE AND MANAGEMENT
8. SURFACE WATER MANAGEMENT

### **MATTERS TAKEN INTO ACCOUNT WHEN MAKING RECOMMENDATION TO THE MINISTER - S 269(4) MINERAL RESOURCES ACT 1989**

#### **(a) Have the provisions of the act been complied with?**

I am satisfied that the applicant is a Corporation and therefore an eligible person as defined in Section 5 and is thus entitled to make the application under Section 233 of the Act. Documentary evidence of incorporation is contained in exhibit 8.

Whilst there is no evidence that the land applied for is a reserve as defined in the Act, there is a road reserve within the proposed lease area and the applicant has applied for closure of the road reserve (DJH4 Ex.1). The only improvement referred to in Section 238(2) within the boundaries of the surface area applied for is a bore known as the A.G. Bore and as the landowner has not

given his consent as required by Section 238(2)(a) of the Act the 50 metre area surrounding the A.G.Bore will constitute an exclusion zone and be excluded from the surface of the lease area. Subject to that exclusion, I am satisfied that the application is not in respect of land over which a mining lease shall not be granted without the consent of another person or persons, as provided by Section 238 of the Act.

The applicant was the holder of Mineral Development Licence (MDL) 155, as required by Section 232(1)(c) of the Act, at the time of marking out and making the application.

The Declaration of Posting and Advertising (DJH3 Ex.1) was lodged with the Registrar in accordance with Section 252(9).

I am satisfied on the evidence, including the information contained in the application form and the Declaration of Posting and Advertising, that all the provisions of the Act (other than the provisions requiring the hearing) have been complied with or substantially complied with (s.392).

Service of Documents was in accordance with Section 399 of the Act.

**(b) Is the land applied for mineralised or is the other purpose for which the lease is sought appropriate?**

I am satisfied that the mineral for which the mining lease is sought, namely coal, is a "mineral" as defined in Section 5 of the Act.

I accept the applicant's evidence (primarily para.16 to 21 - Ex.1) and am satisfied that the purpose for which the lease is sought is appropriate. Under MDL 155, over 300 holes have been drilled by the applicant on the area of MLA 70139. The lease area contains extensive coal resources. Of a total resource of 8.4 million tonnes of coking and thermal coal, 7.5 million tonnes would be able to be recovered from the in-situ reserves and 82% of the coal will be suitable for sale.

The area applied for is an extension of existing South Blackwater Coal Limited (SBCL) operations and the existing infrastructure is to be utilised should the present application be granted.

**(c) If the land applied for is mineralised will there be an acceptable level of development and utilisation of mineral resources within the area applied for?**

The evidence of Mr Gyuris, Senior Open Cut Mining Engineer (para.24 - Ex.18), is that due to an improved coal recovery program since the original hearing in October 1996, an anticipated 7.5 million tonnes of coking and thermal coal would be recovered from the in-situ reserves, an increase of 0.4 million tonnes on the original estimate and that despite a decrease in the expected revenue from coal sales due to a reduction in the coal prices since October 1996, sales worth

approximately \$333m were expected.

MLA 70139 is to be developed as an extension of presently existing successful South Blackwater mine operations. The applicant company is a wholly owned subsidiary of QCT Resources Limited (QCT Resources Limited Annual Report 1997 - Ex.29) and I am satisfied that the applicant has sufficient resources and expertise to develop the land to an acceptable level and is in a position to utilise the mineral resources within the area applied for.

**(d) Is the area sought an appropriate size and shape?**

The "Excessive Area" ground of objection has been abandoned in the Amended Grounds of Objection. Paragraph 5.11 of the Amended Grounds of Objection, which relates to information regarding the out-of-pit spoil dumps and the justification of the size and shape of the area applied for, was also abandoned during the course of the hearing (t/s p.614). The size and shape of the proposed lease area have been determined having regard to - construction, use and maintenance of facilities; the area of mineralization; land required for placement of spoil dumps and associated drainage works; a corridor for electricity supply; works associated with the proposed diversion of Rockland Creek.

I am satisfied on all of the evidence that the area sought is an appropriate size and shape.

**(e) Is the term sought appropriate?**

The term of the lease applied for is 21 years. Economic extraction of the resource, best rehabilitation processes, price and demand for coal and the ability to ensure continuous supply under long term contracts have been given in evidence as justifying the term of the lease. I accept that evidence and am satisfied that the term sought is appropriate.

Should circumstances require that the term of the lease be extended or if mining and rehabilitation is completed prior to the expiry date, the applicant has the option of renewal or surrender of the lease (ss. 286 and 309 respectively of the Act).

**(f) Has the applicant the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease?**

The applicant is a wholly owned subsidiary of QCT Resources Limited and the 1997 Annual Report (Ex.29) evidences the parent company's sound financial position. The lease sought will be a southerly extension of significant coal mining operations presently conducted by the applicant. Through its conduct of those mining operations and from evidence given I am satisfied that the applicant has the expertise and experience necessary to conduct mining operations under the proposed mining lease (*Carr v Simnovec* (1980) 26 SASR 263 at 268 and *Pacminex v Aust. Nephrite Jade Mines* (1974) 7 SASR 401 at 415).

**(G) HAS THE PAST PERFORMANCE OF THE APPLICANT BEEN SATISFACTORY?**

The issues which I consider should appropriately be dealt with under this heading and the corresponding Amended Grounds of Objection are as follows -

- (1) Control of parthenium weed (2.1 to 2.13; 4.1)
- (2) Borehole rehabilitation and exploration track erosion (4.2)
- (3) Breached levee allowing run-off directly into Rockland Creek (4.4)

- (4) Illegal destruction of timber along Rockland Creek (4.3)
- (5) Unlicensed dewatering activities (1.5; 3.3; 4.5)

(1) Control of Parthenium Weed

There was a considerable amount of evidence on this issue, principally from the witnesses Garrahy, the Environmental Officer at SBCL (Ex.17) and Dearden, a project officer employed by the Parthenium Action Group (Ex.19). Mr Dearden is also contracted by SBCL to provide the foundation of an action plan for the control of parthenium weed in the Rockland Creek catchment adjacent to the SBCL project area. The evidence indicates that Mr Dearden is presently contracted until 30 June 1998 (MSG5 Ex.17 and Ex.45).

SBCL has a Weed Management Strategy and a specific Weed Management Programme for Rockland Creek (MSG2 & MSG3 Ex.17). The Environmental Officer for the Emerald area has acknowledged (MSG4 Ex.17) that the Weed Management Strategy is acceptable to the Department of Minerals and Energy (DME). Part of the strategy of the applicant is to endeavour to develop a co-operative approach to the control of parthenium weed in the Rockland Creek catchment by bringing together property owners upstream and downstream of SBCL mining activities to discuss and implement control measures. A considerable amount of evidence was also given, concerning not only general strategies and procedures, but also by the witness Garrahy, as to specific action being taken to control parthenium weed. (Paras.11 to 17 - Ex.17 and Ex.32).

The level of activity on a mining lease together with factors outside the control of the applicant, such as spread via watercourses (para.20 - Ex.17) present difficulties in parthenium control and it was evident from Mr Batch's cross examination of Mr Dearden, that Mr Wall's concern was the applicant's adherence to the strategy (t/s pp.247-249). However, the following passage from Mr Batch's cross examination of Mr. Dearden suggests the applicant is taking all possible steps to prevent the spread of parthenium weed (t/s pp.250-251) –

- Q. Are you satisfied that they're taking every precaution?
- A. In, in how do you mean?
- Q. To prevent to ensure there's no dispersal. Are they doing every precaution to ensure there's no dispersal of parthenium weed seed?
- A. I don't know what else they can do. and I don't, I don't know anything particular that they're doing that is spreading parthenium weed.

The evidence and the inspection indicate that Mr Wall's property is currently free of parthenium weed due solely to his own ongoing efforts. As Mr Wall will continue to conduct his grazing operations immediately to the south of the proposed lease area, he is entitled, upon a positive recommendation, to protection in addition to that generally required by statute (s.35 Mineral Resources Regulation 1990) and the applicant has agreed to conditions (t/s pp.15-16) as recommended by the Warden in the original hearing (p.28 - Ex.52). Beyond that, the weed management program (commitment 11) is a matter for SBCL and the DME. Section 35 of the Mineral Resources Regulation 1990 sets out prescribed conditions for all mining leases relating

to control of parthenium weed. As Warden Christensen noted - "This is an issue which affects not only the private property rights of the owners but can be properly considered as one of major environmental importance." (p.20 - Report MLA 6949 Emerald). The video presented in evidence endorses that observation. (Parthenium Creep Towards 2000 - Ex.12). Clearly, the views of landholders and the applicant differ on whether "every precaution is being taken to ensure there is no dispersal of parthenium weed seed." (s.35 Mineral Resources Regulation 1990). Whilst the Wardens Court is required to determine the relative merits of this application and the objections (S.268(3)), where such differences of opinion exist, the ongoing arbiter on an issue of this nature should be the DME through its Environmental Officers.

Evidence was given of cattle grazing on current Lease areas (Ex.43) and I also observed cattle in such areas during the inspection on 22 April 1998. The presence of cattle on lease areas is a matter for concern, particularly in this case where the evidence is that the adjoining property owner, Terang Pty Ltd is a wholly owned subsidiary of QCT Resources Limited (Ex.60-61). The Weed Management Strategy provides that cattle are to be kept off the mine site (para.3.2.1 - MSG2 Ex.17) and the witness Garrahy gave evidence as to action taken by SBCL to prevent cattle from entering onto lease areas, such as replacing and repairing fencing (t/s p.441). Whilst the movement of cattle on and off lease areas is unacceptable, I do not consider that it is a sufficient ground alone to warrant recommendation against the granting of a lease on the basis of unsatisfactory past performance. It is a matter which should be investigated by the DME through its Field/Environmental Officers to determine whether improved measures are necessary to exclude cattle from lease areas. I am otherwise satisfied on all of the evidence as to strategies, procedures and specific action being taken in relation to the control of parthenium weed, that the applicants are taking every precaution to ensure there is no dispersal of parthenium weed seed.

(2) Borehole Rehabilitation and exploration track erosion

Mr Wall's evidence is that the company has drilled approximately 300 holes on "Ganadero" and a substantial number of holes on "Memooloo", the property owned by the McCamleys (para.3(e) - Ex.21). Mr Gyuris, the Senior Open Cut Mining Engineer, in his affidavit states that many of the drillholes were drilled by the applicant's predecessors. (para.67 - Ex.18).

Mr Brady, site geologist in the employ of SBCL since April 1996 and the person in charge of rehabilitation of boreholes and erosion caused by exploration gave evidence that SBCL keeps records of the date of drilling of the boreholes but that the records give no information as to the date or presence or absence of rehabilitation (t/s p.149); Further, that his policy was to rehabilitate work that he had done first and then to look to what needed to be done with the old boreholes (t/s p.159). Mr Brady's initiative was to commence rehabilitation on new boreholes on Ganadero about December 1996 and on the old boreholes from early 1997 (t/s p.161 & 163). As at the date of the re-hearing approximately 90% of all boreholes had been rehabilitated, with the remaining 10%, representing approximately 100 holes being on the Togara property (t/s 171). Mr Brady's evidence is that, prior to the Humboldt inspection, apart from the upgrading of a track into Ramp 17 for access, he didn't know of any erosion that required attention and further that Mr Wall hadn't told him of any (t/s p.183). Subsequent to the Humboldt inspection, an

inspection of Ganadero by Mr Wall, Simon Brady and Mark Garrahy took place on 5 December 1997 and a schedule of rehabilitation work was prepared and is contained in a letter to Mr Wall dated 18 December 1997 (Ex.38). The most significant erosion observed on the inspection was at inspection point 14 (Ex.56) where temporary rehabilitation measures had been taken pending permanent rehabilitation and Mr Brady's further evidence was that the areas in Ramp 17 that are badly eroded and in need of restoring were 60% completed (t/s p.188).

As early as October 1996 Mr Brady undertook significant rehabilitation work which Mr Wall described as an "excellent result" (t/s p.566) and the standard of rehabilitation work undertaken since, both in relation to boreholes and erosion, has been to the satisfaction of Mr Wall (t/s pp.560-565). Mr Ambrose in his written submissions said - "It is conceded that the rehabilitation of exploration boreholes has not been up to the standard expected of mining companies today. In recent times however the applicant has remedied these matters." (p.6 - Ex.73). The evidence suggests that it was more the rate of rehabilitation than the standard of rehabilitation work which was the basis for the objection.

Mr Randall, General Manager of SBCL since October 1996 gave evidence that he was aware that environmental rehabilitation was an issue for the landholders, but that his understanding was that the program that SBCL had in place was meeting their demands and requirements (t/s p.199). The applicant has had in place since January 1997 a formal Borehole Rehabilitation Procedure (GG4 Ex.18) and I am satisfied on the evidence presented that the standard and rate of rehabilitation of boreholes and erosion caused by exploration is being addressed in a satisfactory manner. As I stated in relation to the control of parthenium weed, the ongoing arbiter on such issues should be the DME through its Environmental/Field Officers.

(3) Breached levy allowing run-off directly into Rockland Creek

This ground of objection specifies that "The applicant has allowed levees in the Marshmead Lease which are supposed to prevent run-off from disturbed areas into Rockland Creek, to be breached and not promptly repaired." There is no evidence that more than one breach of a levy has occurred. Mr Wall's evidence is that he first observed the breached levy on 8 October 1996. (para.3(I) - Ex.21). In reliance on the Daily Rainfall Record for 1996 (Ex.54), Mr Batch in cross examination of the witness Garrahy, suggested that the levy bank almost certainly breached on 30 September or 1 October 1996. Mr Garrahy agreed that this was possible. (t/s p.420). The evidence does not establish exactly when the breach occurred. The most useful evidence to assist in ascertaining as near as possible when the breach occurred comes from Mr Garrahy in cross examination.

Mr Garrahy was absent on a training course from 4 to 20 October 1996 and information concerning the breached levy was subsequently conveyed to him by Michael Hill, the person in charge of environmental responsibilities during his absence. That information was that no breach had been observed prior to the storm in late September and that he first found the breach in early October, but he did not give a specific date. Further, that contractors were on site completing some other rehabilitation work and that those contractors were utilised to fix the breach as soon as the machinery could get into the area and on that point, Mr Garrahy's own evidence is that in that area it is very boggy for days if not weeks, after the rain, depending on the amount of rain.

(t/s pp.418-419). The Daily Record of Rainfall for 1996 (Ex.54) reveals that significant rainfalls were recorded on 30 September (96.5mm) and 9 October 1996 (35.0mm) with a further 28.3mm rainfall between those dates. Repairs to the breached levy were taking place during the Humboldt hearing inspection on 16 October 1996. (t/s p.418).

Stormwater discharge is permitted pursuant to the Regulated Waste Storage and Regulated Waste Disposal Facility Licence Conditions (Ex.55). Prior to the breach, the engineering construction through that area basically followed the topography and the breach occurred in a low section of the levy. Following the breach, the levy bank was built up to a uniform level throughout. (t/s pp.391-392).

Any breach of a levy on a mining site is a matter for concern and has the potential for serious environmental consequences. This breach however is an isolated incident which occurred after significant rainfall. There is no evidence of any adverse environmental impact and I am satisfied on the evidence that SBCL has effected repairs and improvements to the breached levy at the earliest opportunity.

(4) Illegal destruction of timber along Rockland Creek

The applicant's response to this objection is to be found principally in the evidence of Mr Gyuris (para.70 - Ex.18 & t/s pp.124-132). Mr Gyuris wrote to the Department of Natural Resources (DNR) seeking approval to pull timber and attaching a plan of the two areas involved. (GG5 Ex.18). One area was on the current Marshmead lease and the other on the Terang property. A forest ranger visited the area with Mr Gyuris and subsequently written advice was received from the DNR informing Mr Gyuris that there was "no objection to the clearing of both areas". (GG6 Ex.18). Following a complaint by Mrs Wall to the DME, SBCL investigated the matter and reported the results to the Environmental Officer, DME, Emerald. (GG7 Ex.18). The report concluded that SBCL had erred in clearing timber on Terang which is held under a pastoral tenure by Terang Pty Ltd and further advised that SBCL procedures were being reviewed to ensure that such an incident was not repeated.

Mr Batch in cross examination of Mr Gyuris suggested that the clearing of Area 2 was a serious breach by the company - "And..we'll never know now..whether..the Land Act people DNR..might have had something quite different to say about this major clearing of timber..in one case right near the creek" (t/s p.130); However, given the written approval from the DNR, the personal visit by a forest ranger to the area in the company of Mr Gyuris and the fact that there is no further evidence before me as to any adverse views held by the DNR or the DME in relation to the timber clearing, it would appear that this issue has been dealt with to the satisfaction of the DME.

I accept the evidence of Mr Gyuris as to the necessity for clearing an area of that size. The area cleared on the proposed lease site will be required for location of haul roads, the main coal ramp, the proposed drainage works to protect Rockland Creek from contaminated discharge and the desilting pond required to ensure that water is treated before discharge into Rockland Creek .

(5) Unlicensed dewatering activities

The objection on this issue is that the applicant requires a licence under the Water Resources Act 1989 for dewatering activities and that there is no evidence of the applicant holding such a licence. The applicant does not dispute the fact that it holds no licence for these activities.

In a facsimile transmission dated 20 August 1996 the Environmental Officer at Emerald, Megan Proposch, advised Mark Garrahy in relation to groundwaters in the South Blackwater area that - "As this groundwater is of some value, the extraction of the groundwater needs to be authorised by the DNR under the Water Resources Act by means of a waterworks licence.(Refer to DNR)" (Ex.62). Mr Garrahy's evidence was that - "I had a conversation with somebody within the Department of Natural Resources in Brisbane at length prior to finalising a lot of this information and he outlined to me that look yeah dewatering bores for mines have been ignored by the Department. Simple as that." (t/s pp.502-503). His further evidence was that, presumably as a result of that conversation, such licensing was in the discretion of the DNR and that licences were not required. (t/s p.503). Mr Gyuris gave evidence that the applicant's legal advice is that a licence is not required. (para.59 - Ex.18). Whether both are referring to the same source of information is not clear.

The DME has informed the applicant that where groundwater is of some value, the extraction of the groundwater needs to be authorised by the DNR under the Water Resources Act by means of a Waterworks Licence; Further, that discretionary allowance has been made in the past for dewatering coal seams where water quality has no current or foreseeable alternate beneficial uses. (Ex.62). It is not sufficient for the applicant to say that somebody from DNR has said that a licence is not required. The applicant should be required to provide the DME with written confirmation from the DNR that licencing of dewatering activities is not required or alternatively, be able to provide details of any licences the DNR require the applicant to hold.

**Summary - Past Performance**

The main issues of an ongoing nature are control of parthenium weed and exploration rehabilitation. I was urged by Mr Batch in his closing address to make a finding similar to that of Acting Warden Chilcott in the Humboldt hearing (LECW4 Ex.21), in which SBCL was the applicant and Mr Wall one of the objectors, namely that the past performance of the applicant had not been satisfactory. The Acting Warden's Recommendation should be stated in full :-

**(Humboldt)**

**"Recommendation:**

I have considered the whole of the evidence and submissions and rejected certain grounds of objection. I am of the view that a number of the objections have been substantiated by way of evidence given through various witnesses.

Individually, the grounds of objection which have been substantiated in this matter would not be of sufficient weight to justify the application being recommended for rejection. However, in my opinion the grounds of objection taken collectively are of sufficient weight to recommend that the application be rejected.

Therefore having considered all of the matters set forth in section 269 of the Act, I recommend to the Minister that the mining lease be rejected over the whole of the application area, for the following reasons :-

1. **Past performance i.e., environmental damage as a result of exploration activities leads to the inference that the applicant mining company will perform at the same unsatisfactory level if the lease is granted.**
2. **The applicant has failed to satisfactorily control parthenium weed on its existing leases.** The evidence indicated that Ganadero is free of parthenium weed due to the diligence of the Walls. Mr Wall has real and justifiable concerns about the intent and level of control adopted by the applicant mining company.
3. **There is a lack of detailed evidence in relation to future mining plans for underground operations, the exclusion zones, the reserves that are proposed to be extracted, the Rockland Creek diversion and the public road diversion.** There was no evidence from any person with an intimate knowledge of the details of the application. Despite the skilful attempts of Counsel for the applicant mining company to present the material in its best form, it was apparent that the principal witness was from a different area of operations and it was difficult to regard his evidence as being reliable in the circumstances.”

Those parts of the report itself that are most relevant to past performance are as follows -

“Upon a consideration of the evidence, the submissions and having regard to the damage and lack of proper rehabilitation observed during my inspection of the areas in question, I am of the view that the objections raised on environmental issues have been substantiated to such a degree where I am not satisfied that the past performance of the applicant in relation to issues of exploration, erosion and parthenium control has been satisfactory. This leads to an inference that performance after the grant of the lease would be similar. Although it was submitted that there has been a lack of history of complaint until the recent applications, I am of the opinion that there was insufficient evidence raised by the applicant at the hearing to rebut the grounds of objection on these points.” (pp.13-14 LECW4 Ex.21).

“Whilst some matters such as groundwater can be covered by compensation or by the application of the preservation of rights, powers within the Mineral Resources Act (s.416), the evidence has demonstrated that matters such as parthenium control have not been adequately canvassed by the applicant.” (pp.20-21 LECW4 Ex.21).

There are three aspects of the Humboldt hearing which I consider to be significant in its application to the present re-hearing. The first aspect is that the Acting Warden stated that individually, the substantiated grounds of objection would not justify a recommendation for rejection, but that collectively they were of sufficient weight to recommend that the application be rejected. As to whether the application would have been rejected on grounds of unsatisfactory past performance alone is a matter for individual opinion and both Mr Ambrose and Mr Batch

were Counsel for the applicant and the objectors respectively in that hearing. Mr Ambrose in his closing submissions in this re-hearing said, in reference to the Humboldt hearing - "You have read the Acting Warden's decision and his reasons and in my submission the poor past performance that he found alone would not have deserved a negative recommendation." (t/s p.672). Some indication as to the weight that the objectors placed on the applicant's lack of detailed evidence in relation to future mining plans for underground operations, being part of the Acting Warden's third reason for recommending rejection, is to be found in the closing submissions of Mr Batch in the Humboldt hearing - "The MLA is an application for inextricably combined open cut and underground. The applicant has not sought somehow to sever its application for open cut which is better presented I have to say of course from its application for underground which is not presented at all in evidence. If it could do so and it probably couldn't at law anyway. With the result that in my submission the absence of any underground evidence will drag down the whole of the application and inevitably cause the court to make a negative recommendation to the Minister for the whole of the application." (t/s p.226 MLA 70151 Emerald ). Although there are a number of issues common to both the Humboldt hearing and the present re-hearing, each application and any objections are to be dealt with according to the evidence presented.

The second significant aspect of the Humboldt hearing is to be found in the Acting Warden's conclusion that unsatisfactory past performance in relation to issues of exploration, erosion and parthenium control "leads to an inference that performance after the grant of the lease would be similar." Mr Batch, in his closing submissions in the present re-hearing stated - "My client accepts that the steps being taken now and in the very recent past are not mere window dressing" (t/s p.642); and further "There is no doubt that the applicant has substantially improved its past performance in the extremely recent past. But in my submission as against the decade that SBCL has had its leases as part of the QCT Resources Group and the years before that ..when it happens the same SBCL entity was in place albeit under different ultimate control and ownership whether that decade and more of unsatisfactory past performance can be wiped clean by some weeks of improved performance and by an honest and sincere statement by Mr Randall that matters will be better from now on". (t/s p.653). Again, it is a matter for this court to determine whether the past performance of the applicant has been satisfactory in light of all the evidence presented.

The third and probably the most significant aspect is that the applicant in the Humboldt hearing raised insufficient evidence in relation to the issues of control of parthenium weed and rehabilitation of borehole and exploration erosion, as was noted by the Acting Warden in his report.

In the present re-hearing an abundance of evidence was given on past performance issues, particularly relating to control of parthenium weed and exploration rehabilitation. That evidence related to periods both before and after the Humboldt Report and Recommendation. The general Manager Mr Randall gave evidence of upgrading standards since the Humboldt recommendation (t/s p.196) and it was clear from the evidence of Simon Brady and Mark Garrahy that much had been done to ensure improved standards were being met in their respective areas of responsibility. On the issue of lack of complaint, Mr Batch submitted that I would find that Mr Wall had complained continually over a period of many years, but that there was no obligation on Mr Wall to keep complaining, rather that it was a question of the company discharging its

obligations. (t/s p.656). There may not be any obligation on Mr Wall to complain, but any complainant should reasonably expect that, upon substantiated lack of response by any holder of a mining lease to genuine matters of complaint, the DME would investigate the matter and where necessary, initiate remedial action. Mr Randall gave evidence that he was aware that environmental rehabilitation was an issue for the landholders, but that his understanding was that the program SBCL had in place was meeting their demands and requirements (t/s p.199) and further, that he believed Mr Wall was happy with the way the company was approaching the program. (t/s p.209).

I found the witnesses Randall, Garrahy and Brady to be credible and accept that they are and have been committed to the task of maintaining, at the very least, a satisfactory standard of performance in their respective areas of responsibility.

Mr Hill gave evidence at the initial hearing that the applicant has never forfeited any security deposit or tenement, or been called upon to show cause (para.40 to 42 - Ex.1) nor was any evidence presented in the re-hearing of any such action being taken against the applicant.

The issues of cattle on mining lease areas and DNR licensing for dewatering of bores should be addressed as I have previously indicated. However, upon consideration of all the matters raised under the grounds of objection relating to unsatisfactory past performance, I am not satisfied that the evidence supports a recommendation against grant of the lease.

**(h) Is there any disadvantage to the holder of or applicant for exploration permits or mineral development licences?**

The applicant was the holder of MDL 155 at the time of marking out and making the application. There is no evidence that any other holder of or applicant for any exploration or mineral development licence has been disadvantaged.

**(i) Will the operations to be carried on under the proposed mining lease conform with sound land use management?**

MLA 70139 will be an extension of current SBCL mining operations for the purpose of open cut mining of substantial coal resources and the existing infrastructure is to be utilised should the present application be granted. The existing Plan of Operations is being reviewed to include MLA 70139. (para.44 to 47 - Ex.1).

Apart from environmental and competing land use issues, which I will later address, I am satisfied that the operations to be carried on under the proposed mining lease would conform with sound land use management.

**(j) Will there be any adverse environmental impact caused by the proposed operation, and if so, the extent thereof?**

Mr Batch submitted that the court is required to examine in depth any adverse environmental impacts and the extent of those environmental impacts (*Sinclair -v- Mining Warden at*

*Maryborough & Another* (1975) 132 CLR 473 at 481); Further, that the introduction of the EMOS process has not in the slightest way altered the court's task. (t/s p.650).

The EMOS is to "state strategies for –

- (i) protecting the environment and managing environmental impacts on, and in the vicinity of, the land to be covered by the proposed lease; and
- (ii) progressive and final rehabilitation of the land." (s.245(1)(p))

As Mr Batch noted, "There must be some degree of difference between strategies and full details". (t/s p.645). The purpose of the EMOS is described in the DME Environmental Policy For Mining as providing "the planning and operational link between any study of environmental impacts and the Plan of Operations". (p.11 MSG10 Ex.17). It is the duty of the court to take into account and consider, on all of the evidence presented including the EMOS, whether there will be any adverse environmental impact and if so the extent thereof.

The EMOS contains a combination of facts and strategies on a range of matters relating to environmental impact and control. (3.1-3.11). The proposed mining activity is in a sparsely populated rural environment and there is no evidence that any residents are sufficiently proximate to be adversely affected by the dust fallout, noise or ground vibration associated with such activities. In respect of these issues, undertakings are contained in the EMOS to promptly address any complaints from neighbouring landholders.

In relation to surface water management , in a letter dated 28 November 1996 the Technical Services Officer of SBCL advised Mr Cameron Pocknee, the DME Principal Regional Environmental Officer, that Rust PPK Pty Ltd were preparing a report that outlines the civil works required for the pit, primarily to control the discharge of water. (Ex.31). Accompanying that letter is a 'Site Layout Plan', which contains details of the Rockland Creek diversion, sedimentation dams and associated drainage works. Mr Gyuris described the plan as "a small plan showing the general layout of the of the extension of the diversion channel at Rockland Creek...the detailed document is... quite sizeable with all the drawings". (t/s p.65). Mr Gyuris described those drawings as "detailed drawings of drainage works..culvert works..diversion works..under haul road direction of the creek.the size of the culverts..the size of the steel works inside it.everything the nitty gritty ready to be constructed." (t/s p.67). Notwithstanding the absence in evidence of the actual detailed drawings to which Mr Gyuris referred, I do not accept the submission of Mr Batch that I would have to find, as did the Acting Warden in Humboldt, that there are no written plans for the creek diversion and that as a consequence I am not able to consider the extent of adverse environmental impact (t/s p.651-652).

Drainage works and diversion works are referable to DNR and are subject to licencing requirements. The evidence of Mr Gyuris, the Senior Open Cut Mining Engineer, is that - "The drainage works must be licensed under the provisions of the Water Resources Act 1989. The applicant will obtain the relevant licenses from the Department of Natural Resources. Detailed feasible designs will have to be provided to the Department otherwise the licences will not be issued." (para.83 - Ex.18). Mr Ambrose addressed that issue more succinctly in his closing submissions - "You could make a recommendation a recommended condition that the mining lease not issue until the surface water management plans are approved. But of course that would

be superfluous because the lease will not issue until they are in place". (t/s p.679).

Present existing infrastructure in the main industrial area where the wash plant and tailings dam are located will be used for the South Marshmead operations. (t/s p.677).

As to diverting Rockland Creek through the final void for South Marshmead, the evidence of Mark Garrahy is - "Passing Rockland Creek through the final void for South Marshmead is not authorised under the current Waterworks Licence, and will not be unless the Department of Natural Resources is satisfied with the applicant's proposal, including from an environmental management point of view. This proposal is not disclosed in the EMOS as it is not a strategy proposed by the applicant but merely a possible outcome which needs detailed investigation." (para.64 - Ex.17). Mr Furness, who gave professional evidence for Mr Wall in relation to groundwater studies, stated in his report that - "It was beyond the scope of this study to assess in detail the potential impact on the groundwater of the diversion of Rockland Creek through the void", but went on to provide some preliminary comments on that issue. (p.13 - Ex.24). Given Mr Garrahy's evidence, diversion of Rockland creek through the final void is not presently an issue. Should it become so in future rehabilitation plans, it will be referable to the DNR.

The only bore within the area applied for is the AG bore and this will form an exclusion zone. I have previously dealt with the issue of dewatering and any such activity should be approved by the relevant authority, namely the DNR.

SBCL's overall methodology for rehabilitation of land post mining is stated in 3.5.1 of the EMOS - "Rehabilitation methods and techniques used at South Blackwater have evolved in consideration of many years of research and practical application. The aim is to achieve a stable landform on spoil by utilising good drainage control and creating a bushland situation based on native trees, shrubs and grasses." The company has received two commendations for its environmental management at the 1995 and 1996 Premier's Awards for Environmental Excellence in recognition of the high standard of rehabilitation undertaken at the South Blackwater coal mine. (para.45 - Ex.17). The DME's Environmental Management Policy for Mining in Queensland includes the following objective:

**"Achievement of acceptable post-disturbance land use capability.**

Mining and rehabilitation should aim to create a landform with land use capability and/or suitability similar to that prior to disturbance, unless other beneficial land uses are pre-determined and agreed." (p.2 MSG10 Ex.17).

Mr Garrahy's evidence is that a return to grazing use is neither practical nor desirable and that the final beneficial land use will be principally as a wildlife corridor. (para.59 - Ex.17). Mr Gyuris agreed with Mr Batch in cross examination that the land could be restored to grazing use in a technical and engineering sense but that the cost would be prohibitive. (t/s p.116).

Mr McCosker of Resource Consulting Services Pty Ltd gave evidence on the effects mining would have on current and potential land use of Mr Wall's grazing business and agreed that the rehabilitation proposed by SBCL was a beneficial land use which would be acceptable to him as an ecologist. (t/s p.531). Mr Wall himself agreed that the proposed rehabilitation was

“probably acceptable to the communities of today.” (t/s p.618).

The rehabilitation proposed is in accordance with standards which have been acknowledged by the State through commendations awarded for a high standard of rehabilitation.

The Plan of Operations must be acceptable to the Minister (s.291) and the EMOS in its final form must also be approved by the Minister (s.270A) and together will collectively address all matters relating to environmental impact and rehabilitation.

### **RELEVANT AMENDED GROUNDS OF OBJECTION (2.14; 8)**

Objection 2.14 relates to a requirement for drainage control works to channel all run-off back to Rockland Creek. SBCL has agreed (t/s pp.15-16) to a condition as recommended by Warden Windridge in the original hearing to ensure that “Ganadero” is protected from surface water run-off from the proposed lease area. (p.28 - Ex.52). Subject to that condition, I am not satisfied that the evidence relative to this Amended Ground of Objection supports a recommendation against grant of the lease.

Objection 8 - Surface Water Management - Evidence has been given that Rust PPK Pty Ltd have prepared detailed drawings of drainage works and the drainage works are subject to DNR licensing. There is no evidence that surface water management on current SBCL mining operations has caused any adverse environmental impact. Mr Wall himself acknowledged the company's ability to manage surface water. (t/s p.623). In addition, the applicant's current Water Monitoring Programme monitors water quality to ensure “that unforeseen alterations in water quality can be detected and action taken to ameliorate against deleterious environmental impacts.” (EMOS 3.3.11). Upon consideration of all matters raised under Amended Ground of Objection 8, I am not satisfied that the evidence supports a recommendation against grant of the lease.

#### **(k) Will the public right and interest be prejudiced?**

The applicant has applied for closure of the road reserve within the proposed lease area. There is no evidence of public utilities running on or across the land. In his original Form of Objection Mr Wall states “It would be against the public interest to allow the groundwater resource to be damaged or destroyed.” (p.4 - part of Ex.30). I have dealt with the issue of unlicensed dewatering activities previously and notwithstanding the differing expert opinions as to the capacity of the AG Bore to recharge post mining, I do not consider the possible loss of the AG Bore as a future source of water to be of sufficient import, when weighed against the substantial benefits which will flow from the proposed mining operations, to warrant a recommendation against the grant of the application.

There is no evidence of any endangered flora or fauna within the application area, nor is there any evidence of any sites of historical interest or aboriginal significance within the application area. Should any such sites be identified, the EMOS document can be amended to allow for site protection or avoidance strategies.

No other factors prejudicial to the public right and interest have been put forward in evidence.

**(l) Has any good reason been shown for a refusal to grant the mining lease?**

The economic viability of such a project is a commercial decision for the applicant and not the court and the utilization of the mineral resources has been addressed when considering the requirements of section 269(4)(c) of the Act. Having considered all aspects of the application, I am satisfied that the objectives as stated in sections 2(a), (b), (c), (d), (e) and (g) of the Act will be met if a mining lease is granted for the term recommended, for the following reasons –

1. The operation is an extension of a current successful SBCL project.
2. The location of the proposed mining operations is unlikely to cause environmental or public interest concerns that have not already been addressed elsewhere in this Report or through relevant reports and studies of the applicant.
3. A realistic security deposit as required by the Act (s.277), subject to EMOS discounts if appropriate, will be applied to guard against financial failure of the applicant and to ensure that rehabilitation is completed.
4. The applicant has demonstrated experience in the mining industry to accurately assess the potential of the project.
5. The State will gain significant returns through a variety of charges made by government and semi-government organizations for utilization of State facilities. (Ex.33).
6. There is a market for the product and the extension of mining operations will provide significant ongoing employment. (para.23 - Ex.18).

Mr Hill's evidence is that there will be substantial works expenditure for the extension of mining activities into South Marshmead and as well, substantial expenditure on housing and associated rates payments to the local authority. Mr Hill's further evidence is that, where possible, SBCL adopts the policy of making use of local goods and services. (pp.61 & 62 - Ex.27).

**(m) Is the proposed mining lease operation an appropriate land use, taking into consideration the current and prospective uses of the land?**

Mr McCosker gave evidence of the effect of coal mining operations over South Marshmead MLA area on the current and potential land use on "Ganadero". (Ex.23). In relation to the current use of the area applied for, Mr McCosker's evidence is that - "The paddocks which comprise the South Marshmead MLA have traditionally been used by management as a drought reserve. In other words, the feed in these paddocks was conserved during good seasons and used in poor seasons to avoid the need to destock the property. Mining in this area will therefore remove the key drought strategy of the property." (p.7 - Ex.23). Further evidence was given as to the long term carrying capacity of the proposed MLA area under "cell grazing." (p.15 - Ex.23). Mr McCosker assesses the land in the South Marshmead area as being of better quality, in terms

of agricultural and grazing suitability (pp.4 & 5 - Ex.23), than does the EMOS (para.3.4.1).

There is no evidence of suitability for any other alternate use of the land.

It is clear from the evidence that the revenue generated from coal mining will far exceed that of grazing operations. The benefits to the State and the community have been canvassed under paragraph (L) above. Apart from Mr Wall's understandable desire to retain his land for grazing purposes, I am not persuaded that this use should be preferred to the exclusion of the substantial benefits to flow to the community and the State from the proposed mining operations. Upon consideration of all the evidence, I am satisfied that the proposed mining operations are an appropriate land use taking into account the current and prospective uses of the land.

A mining lease shall not be granted unless compensation has been determined by agreement or by a determination of the Wardens Court. (s.279(1)). There is no evidence of a compensation agreement having been filed with the Registrar (s.279(3)) and consequently it will be necessary for the Wardens Court to determine the question of compensation. (s.279(5)).

### **RELEVANT AMENDED GROUND OF OBJECTION (7)**

Mr Wall himself conceded that his objections relating to "Land Use And Management" were essentially compensation matters. I have however considered all matters raised under Amended Ground of Objection 7 and am not satisfied that the evidence supports a recommendation against grant of the application.

### **REMAINING AMENDED GROUNDS OF OBJECTION**

#### **1. Restricted Land; 3.Replacement Water Supplies; 6.Loss of Groundwater**

It is clear from Mr Wall's evidence that the AG bore is a vital water source for the conduct of his grazing business. It is equally clear that dewatering of the AG bore will progress to the stage where it will no longer provide a reliable source of water supply even if the bore were deepened to a lower aquifer. (t/s pp.302-303). Expert evidence for SBCL and Mr Wall was given by the witnesses Lindsay John Furness and Paul Ernest Smith respectively. The essential difference between the evidence of these witnesses appears to be in terms of the capacity of the bore to recharge at the end of the mining period. I have canvassed the issue of dewatering of bores at length and simply reiterate that such activity is subject to DNR approval. Beyond that, the issues for this court are supply of a suitable alternate source of water by the applicant or payment of compensation.

Mr Wall has indicated he would accept the offer of replacement water (t/s pp.583) and SBCL has made it clear that such alternate supply would have to come from outside the lease area, as Mr Wall would be denied access to the lease area for the purpose of accessing water supply. (t/s p.113). An alternate bore outside the area of influence of dewatering is a possibility. (p.3 DJH9 Ex.1 & t/s p.17). Mr Wall himself in the compensation hearing made reference to the fact that he had considered he might re-equip the Seneschal bore to make up the lost water from the AG bore. (p.312 LECW6 Ex.21). As stated in the original hearing (p.23 - Ex.52), ideally the alternate water supply should be from a bore and facilities that fit in with the grazing operation conducted by Mr Wall. Mr Wall should also have a guarantee of continued access to the AG

bore until the alternate water supply is provided. Given the applicant's stance on refusing Mr Wall access, the alternate supply would have to be provided prior to the point in time when the company will restrict access to the site to authorised persons only. In the event that SBCL is unable to provide the alternate supply on that basis, it would appear that the loss of use of the AG bore necessarily becomes a compensation issue.

Compensation or an alternate water supply as outlined above are, in my view, the only practical alternatives. I accept the proposition put forward by Mr Ambrose that, in essence, a combination of the provisions of section 5(1)(iii) of the Property Law Act 1974 and section 403(1)(e) of the Mineral Resources Act 1989 allow SBCL to refuse entry to any mining lease areas and, as a consequence of that, deny Mr Wall any right of access to the AG Bore. Mr Batch in his cross examination of Mr Gyuris canvassed various issues relating to safe access to the AG bore. Mr Wall also seeks a special condition that SBCL accept liability for any damage or injury he might suffer in exercising such access. (para.13.3 - Ex.72). In addition, section 38(1) of the Mines Regulation Act 1964 provides - "The occurrence of an accident in, on or about a mine shall be prima facie evidence of negligence on the part of the manager". When these issues are considered collectively, the refusal of SBCL to consent to access is understandable.

The opinions of Mr Furness and Mr Smith vary as to whether or not mine dewatering on South Marshmead will affect the Seneschal Bore. Mr Furness gave evidence of discussions with SBCL concerning a groundwater monitoring program (t/s p.326-327) and the EMOS states - "Investigations are being undertaken to provide sufficient data to develop a groundwater management strategy for the Marshmead/South Marshmead area." (EMOS 3.3.7.3). The PEAR states, under the heading "DME Comments" that - "based on past experiences of surrounding property owners, a commitment to the protection of groundwater supplies at neighbouring properties should be detailed". (p.8 MSG6 Ex.17). Consequently, the EMOS should include details of the strategies for the monitoring of groundwater levels. A commitment has also been given to ensure that where adjoining landholders are deprived of adequate groundwater supplies to service their existing pastoral operations, SBCL will ensure a make-up quantity of similar quality groundwater. (EMOS 3.3.7.3.3).

Upon consideration of all matters raised under these Amended grounds of Objection, subject however to the inclusion in the EMOS of details of the strategies for the monitoring of groundwater levels, I am not satisfied that the evidence supports a recommendation against grant of the lease.

Amended Grounds of Objection 1.5 and 3.3 have previously been dealt with under the heading "HAS THE PAST PERFORMANCE OF THE APPLICANT BEEN SATISFACTORY".

#### 5. Inadequate Information

This objection is listed in the original Form of Objection under objection number 7 "Environmental Information Inadequate".

The Act, at the time of lodgement of the Application and the issue of the Certificate of Application, provided –

#### **Application for grant of mining lease**

**245.** (1) An application for the grant of a mining lease shall -

- (p) be accompanied by an environmental management overview, acceptable to the Minister, stating strategies for -
  - (i) protecting the environment and managing environmental impacts on, and in the vicinity of , the land to be covered by the proposed lease; and
  - (ii) progressive and final rehabilitation of the land.
- (4) An environmental management overview strategy may relate to all mining leases in a mining project.

The present application was received at Emerald on 22 April 1996 and was accompanied by an EMOS which was "acceptable to the Minister" pursuant to a delegation from the Minister to the then Mining Registrar, Mr Hudspith. (p.39 14 October 1996 Ex.27). A Preliminary Environmental Assessment Report (PEAR) was forwarded to SBCL under cover of letter dated 26 July 1996 (MSG6 Ex.17) and SBCL was advised of acceptance of the revised EMOS by letter dated 12 September 1996 from the DME. (DJH5 Ex.1).

Mr Batch submits that the provisions of the Act have not been complied with (s.269(4)(a)) in that the EMOS lodged with the application did not contain strategies of the requisite type for South Marshmead. (t/s p.645). Mr Hudspith gave evidence at the initial hearing and was cross examined by Mr Baker for the objector and no challenge was made to his delegated determination that the EMOS was acceptable to the Minister. The only issue pursued by Mr Baker was whether the land had been properly marked out as required by the Act (s.241) and in that regard Mr Hudspith's evidence was that he considered there had been substantial compliance with the requirements of the Act. (p.44 14 October 1996 Ex.27).

The EMOS lodged on 22 April 1996 related to all the mining leases and included the South Marshmead MLA. (p.10 ENAP1 Ex.26). The project EMOS covers existing operations and proposed extensions over many areas including MLA 70139. (para.25 - Ex.1). The document states a series of strategies as required by the Act. (s.245(1)(p)). The fact that the EMOS was later revised to include more information specific to the South Marshmead MLA does not mean that, as a matter of law, the original EMOS did not satisfy the requirements of the Act (s.245(1)(p)) and I am satisfied that there has been substantial compliance with the Act, which the Act itself provides may be accepted as compliance. (s.392).

The opening paragraph of this Amended Ground of Objection states - "The applicant has not complied with the requirements of the Act and DME policy to demonstrate the technical and financial feasibility of strategies to manage the environmental impact, or that environmental outcomes are acceptable." The Act provides that an application for the grant of a mining lease shall be accompanied by a statement detailing the applicant's financial and technical resources. (s.245(1)(0)(iv)); Further, that the warden, when making a recommendation to the Minister that an application for a mining lease be granted in whole or in part, shall take into account and consider whether the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease. (s.269(4)(f)); Further, that the holder of a lease deposit security for the lease for various purposes. (s.277). DME policy is that - "At the time of issuing the Certificate of Application the technical acceptability of the EMOS may not yet be established" (para.4.2.3. MSG11 Ex.17) and further, that - "Each strategy has to be practical and achievable in both a technical and financial sense." (p.17 MSG10 Ex.17).

I have previously dealt with - the applicant's financial and technical capabilities to carry on mining operations under the proposed mining lease; their proven track record in rehabilitation of land post mining and; whether there will be any adverse environmental impacts caused by the proposed operation, and if so, the extent thereof. For reasons outlined when dealing with those issues, I am satisfied that the applicant has demonstrated that the strategies contained in the EMOS are "practical and achievable in both a technical and financial sense".

Amended Ground of Objection 5.12 states, in part, that - "neither the Court nor myself have the benefit of either DME or Advisory Body assessment". There is no such statutory or policy requirement. Whilst the Wardens Court has a wide discretion in the hearing of an application (s.268(3)), it is for the applicant to present whatever evidence it considers appropriate in support of the application and rebuttal of any objections to the application. In the event that the evidence presented is insufficient for the Warden to properly take into account and consider the matters required by the Act (s.269(4)), the applicant runs the risk of the application being recommended for rejection.

Ross Edward Dunn, Industry Policy Director for the Queensland Graingrowers Association gave evidence for the objector concerning the EMOS document content and process. His evidence was based on three documents -

1. DME POSITION PAPER ON VARIATIONS TO AN EMOS DURING THE MINING LEASE APPLICATION PROCESS (part of Ex.25)
2. DRAFT DISCUSSION PAPER: ENVIRONMENTAL MANAGEMENT OF THE MINING INDUSTRY IN QUEENSLAND (part Ex.25)
3. (Draft Document) - DME Policy Register - (Short Title) Acceptable EMOS (Ex.39)

Notwithstanding the submissions of Mr Batch to the contrary, I do not consider that these documents are relevant to the present application.

The letter dated 26 May 1997 from the DME accompanying document (1) states - "The attached position paper should provide the basis for constructive comment from all interested parties in the debate and allow the Department to then determine the most appropriate final position on the matter and effect whatever changes may be required in the relevant Departmental policies and procedures." The Draft Discussion Paper, document (2) has endorsed below the title, in bold print - "NOT GOVERNMENT POLICY - FOR DISCUSSION PURPOSES ONLY." Document (3) has stamped on the face of the document the word "DRAFT".

Upon consideration of all the matters raised under Amended Ground of Objection 5 I am not satisfied that the evidence supports a recommendation against grant of the lease.

### **SUMMARY AND GENERAL COMMENTS**

I have considered all of the evidence presented in relation to both the original Form of Objection and the Amended Grounds of Objection and am not satisfied that any of the grounds, individually or collectively, are of sufficient weight to support a recommendation against grant of this application and subject to such conditions as are contained in my recommendation to the

Minister, all Grounds of Objection are struck out.

Mr Batch submits that a positive recommendation would have to be heavily conditional (t/s p.643) and the draft conditions are available for the consideration of the Minister. (Ex.72).

Particular conditions relating to matters such as the control of parthenium weed should not be necessary, except where special circumstances dictate otherwise. Section 35 of the Mineral Resources Regulation 1990 requires the holder of a mining lease to take every precaution to ensure there is no dispersal of parthenium weed seed. The various means by which those precautions are taken are generally contained in the EMOS. As became evident during this re-hearing, the concerns of the objector were with adherence to control strategies, not with the actual strategies. It has been stated in previous reports to the Minister that the local Field Officer or the Inspectorate will be available to monitor performance to ensure that industry standards are maintained. (e.g., p.32 MLA 70109 Emerald; p.11 MLA 70149 Emerald). The general public and in particular adjoining landholders are entitled to have confidence that the level of monitoring is sufficient to ensure that the performance standards of mining companies in areas such as control of parthenium weed are satisfactory and it would seem timely for the DME to review whether this is in fact the case.

One of the main issues in this hearing was that of past performance, particularly in the areas of parthenium weed control and borehole and exploration erosion rehabilitation. Mr Batch urged that I adopt the same course of action as that adopted by Acting Warden Costello in MLA 70110, an application by Arco Coal Australia Inc., in a decision delivered in the Brisbane Wardens Court on 20 October 1995, where the application was adjourned sine die. I do not intend to take that course of action. In the event that the Minister requires further evidence on any matter, he may direct the Wardens Court to hold a further hearing. (s.271(1)(c)).

As required by section 269(1) of the Act, I forward to the Minister with this Report and Recommendation the following:-

- (a) The objections lodged in relation to the application (Ex.30);
- (b) The evidence adduced at the hearing;
- (c) Exhibits

### **RECOMMENDATION**

I have considered all of the evidence presented and taken into account the submissions of Mr Batch and Mr Ambrose.

Upon consideration of all matters set forth in section 269(4) of the Act, I recommend to the Minister that the Mining Lease be granted over the whole of the application area for a term of 21 years (s.269(4)) subject to the exclusion zone previously stated and as detailed in the application and subject to compensation being settled or determined by this court.

The following conditions are recommended for the Minister's consideration -

1. A bund wall and diversion channel be constructed within the perimeter fence of that part of the lease which is located on "Ganadero" to direct all water back into Rockland creek.

2. All vehicles and mobile equipment entering onto that part of the lease that is contained within "Ganadero" be washed down and no vehicle of the applicant, its servants agents or contractors enter the balance of the land within "Ganadero" from the lease area.
3. The applicant is to supply water to the landowner, of the same quality and quantity, to replace any supply lost when dewatering makes the A.G. Bore unproductive. The landowner is to have continued access to the A.G. Bore until such time as the alternate water supply is provided. (In the event that consensus on this issue is not reached between the landowner and the applicant or alternatively, compensation has not been agreed upon pursuant to section 279 of the Act, compensation is to be determined pursuant to section 281 of the Act.)

**Dated at BRISBANE this 9<sup>th</sup> day of September 1998.**

**L P VERRA  
ACTING MINING WARDEN**