SUPREME COURT OF QUEENSLAND

CITATION:	*Coast and Country Association of Queensland Inc v Smith & Anor* [2014] QSC 272
PARTIES:	**COAST AND COUNTRY ASSOCIATION OF QUEENSLAND INC.** (applicant) **v** **PAUL ANTHONY SMITH, MEMBER OF THE LAND COURT OF QUEENSLAND** (first respondent) **HANCOCK COAL PTY LTD** (second respondent)
FILE NO:	BS No 4249 of 2014
DIVISION:	Trial
PROCEEDING:	Application
DELIVERED EX TEMPORE ON:	10 October 2014
DELIVERED AT:	Brisbane
HEARING DATE:	10 October 2014
JUDGE:	Peter Lyons J
ORDER:	**1. The hearing dates of 13 and 14 October 2014 are vacated.** **2. The proceeding be adjourned for further review on 11 December 2014, together with matter number BS 9505 of 2014.** **3. The applicant and the second respondent's costs of today's application and the costs thrown away by the adjournment be each party's costs in the cause.**
CATCHWORDS:	PROCEDURE – COURTS AND JUDGES GENERALLY – COURTS – ADJOURNMENT – where the applicant brought an application for a statutory order of review of recommendations made by the first respondent under s 269 of the *Mineral Resources Act* 1989 (Qld) and s 222 of the *Environmental Protection Act* 1994 (Qld) – where the recommendations related to an application for a mining lease – where in both cases, the primary recommendation was that the application be rejected or refused, with an alternative recommendation that the application be granted subject to conditions – where the Minister under the *Environmental Protection Act* made a decision regarding the application for a mining licence consistent with the first respondent's

alternative recommendation – where the applicant brought a second application for a statutory review of that decision – where the second respondent applies for an adjournment of the applicant's first application so that it can be heard at the same time as its second application – where the second respondent submits that there is no utility in the first application being heard independently of the second application – where the second respondent further submits that there is a common legal point in the applications concerning the power of the relevant Ministers to impose the conditions of the first respondent's alternative recommendations – where there is a prospect that conflicting determinations may be made about the scope of the Ministers' powers if the applications were to be heard separately – where no directions have been made to enable the Ministers to be heard on the first application – whether the first application should be adjourned

Environmental Protection Act 1994 (Qld), s 222
Mineral Resources Act 1989 (Qld), s 269

COUNSEL: S Keim SC, with C McGrath, for the applicant
D Clothier QC, with S Webster, for the second respondent
No appearance for the first respondent

SOLICITORS: Environmental Defenders Office for the applicant
Ashurst for the second respondent
No appearance for the first respondent

[1] On 8 April 2014, a member of the Land Court of Queensland made recommendations under two pieces of legislation. The first was under section 269 of the *Mineral Resources Act* 1989 (Qld). That related to an application for a mining lease. The second was under section 222 of the *Environmental Protection Act* 1994 (Qld) and related to the granting of an environmental authority. In each case, the recommendations followed a similar form. The primary recommendation in each case was that the application be rejected or refused. The alternative recommendation in each case was a recommendation of the grant of the relevant application, subject to conditions. There is, at least to some degree, a commonality in the recommended conditions.

[2] Coast and Country Association of Queensland Inc ('Coast and Country') was a party to the proceedings in the Land Court. It has applied for a statutory order of review. The final hearing of that application is listed for next Monday, 13 October 2014. The active parties are Coast and Country and Hancock Coal, the latter being the applicant in each of the applications which were considered by the Land Court Member. Hancock Coal applies for an adjournment of the hearing on Monday for reasons which will be referred to later.

[3] It is, however, necessary to note briefly the scope of the application for a statutory order of review of the Land Court Member's decision. It is first challenged as being beyond power because of the alternative recommendations. It is also challenged as being beyond power because of the condition relating to ground water. Effectively, the recommendation appears to have been under the alternatives mentioned, that a condition be imposed which would leave considerations of ground water to yet a further approval process. That is a process, provision for which is made in the *Water Act* 2000 (Qld), which, it would appear, relates to the grant of water licenses under that Act and, apparently, includes scope to deal with issues relating to ground water.

[4] The third related to the test to be applied by the Land Court Member under each of the provisions in determining whether to recommend that each application be granted, or recommend the rejection or refusal of each application. The fourth was whether the Land Court member erred in law in the way in which he dealt with environmental harm alleged to result from what might be described as downstream activities; that is to say, the transport and the use of the coal which would result from mining, consequent on the granting of the applications.

[5] Coast and Country commenced its proceedings on 6 May this year. So far as the recommendation was made under the *Environmental Protection Act*, the Chief Executive of the Department of Environment and Heritage was a party to the Land Court proceedings. That person was served with the application shortly after it was filed and has expressed no interest in participating in the hearing listed for next Monday.

[6] The Minister who is to decide the application under the *Environmental Protection Act* proceeded to do so, the decision being made apparently on 29 August 2014. Coast and Country has brought an application for a statutory order of review of that decision. Part of its case on that application is that, the recommendation of the Land Court Member being invalid, it followed that the Minister's decision is invalid.

[7] However, a part of its case is also the proposition that questions relating to the issue of ground water had to be finally determined. The Minister's decision recorded that identical recommendations were made by the Land Court both in respect of a condition to be imposed by the Minister dealing with the application under the *Environmental Protection Act*, and the Minister dealing with the application under the *Mineral Resources Act*.

[8] In respect of water licenses, the Minister's decision recorded concern about the imposition of identical conditions as being prohibited by s 276, or perhaps s 276A, of the *Mineral Resources Act*. The decision then further recorded that the Minister responsible under the *Mineral Resources Act* had assured the Minister making the decision that the former would impose a condition in the course of the decision under the *Mineral Resources Act* requiring Hancock Coal to apply for Water Licenses under the *Water Act*, giving effect to recommendations of the Land Court. Coast and Country's case in the second application includes the proposition that that approach is invalid because the relevant Minister was required finally to determine issues relating to matters which might otherwise be dealt with on an application made under the *Water Act*.

[9] The application for the adjournment is based on a number of matters. One is, it is said that the determination of the application listed for hearing on Monday would lack utility. The operative decision is the Minister's decision, the validity of which is the subject of the second application. It is also said that there is a common legal point. That is because it is said by Coast and Country in the first application that the power to recommend conditions is constrained by limitations on the Minister's power to impose conditions; in particular, the Minister must impose conditions finally resolving issues, but in this case these have been left under the Minister's decision to be determined by the Minister administering the *Water Act*. That constraint restricts recommendations also to conditions which satisfy that requirement. It is said that for that reason, each of the Ministers has a legal interest in the subject matter of the first application and it should be adjourned to be heard with the second application, so that the Ministers might be heard on the scope of their power.

[10] In my view, there would be utility in proceeding with the hearing on Monday. The validity of the recommendation, or perhaps at least the question of the extent to which it exceeds what is authorised or required by each of the relevant statutes, could be determined. No basis was identified for saying that that question could be re-litigated when the second application comes on for hearing. I would not grant the application for the adjournment upon that ground.

[11] The fact that an issue is, however, likely to be common to both proceedings is of some importance. It seems to me, moreover, I would be concerned to proceed to determine a question which necessarily will require a determination of the scope of the power of each Minister to impose conditions on the grant of each of the applications. The Ministers are not participating in Monday's hearing. It is correct, I think, to say that they are not, strictly speaking, necessary parties to the first application. But it seems to me their presence is highly desirable in view of the fact they are the repositories of the relevant powers.

[12] Beyond that, it seems to me a real prospect that conflicting determinations may be made by this Court in each of the applications about the scope of the Ministers' powers. It is relatively clear that that question will arise in both applications unless I were to dismiss the present application, when the second application may, for practical reasons at least, then fall away. Failing that, as I say, the same issue would require to be litigated in two separate proceedings with the prospect of conflicting decisions.

[13] There are a number of other issues in the first application which are not, it would appear, of any real relevance to either of the Ministers. There would be some benefit in having those issues determined without their presence. However, it was not submitted, and it does not seem to me to be the case, that that consideration is of great importance. On balance, it seems to me that the concerns which arise from the fact that there is a common issue in both applications, and that the Ministers are not parties to the first application, are such that the hearing on Monday should be adjourned. I propose to so order.