SUPREME COURT OF QUEENSLAND

CITATION:	*Land Services of Coast and Country Inc v Chief Executive, Department of Environment and Heritage Protection & Anor* [2016] QSC 272
PARTIES:	**LAND SERVICES OF COAST AND COUNTRY INC** (applicant) **v** **CHIEF EXECUTIVE, DEPARTMENT OF ENVIRONMENT AND HERITAGE PROTECTION** (first respondent) **ADANI MINING PTY LTD** (second respondent)
FILE NO/S:	SC No 4189 of 2016
DIVISION:	Trial Division
PROCEEDING:	Application for statutory order of review
DELIVERED ON:	25 November 2016
DELIVERED AT:	Brisbane
HEARING DATE:	5 August 2016
JUDGE:	Bond J
ORDER:	**The order of the Court is that the application for statutory order of review is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS FOR REVIEW – ERROR OF LAW – where a delegate of the first respondent made a decision to grant an environmental authority to the second respondent pursuant to s 194(2)(ii) of the *Environmental Protection Act 1994* (Qld) ("EPA") – where the applicant submits that ss 3 and 5 of the EPA, taken together, obliges the delegate to be positively satisfied that in making a decision under s 194(2)(ii) of the EPA, the delegate is exercising her power in a way that best achieves the object of the EPA – whether the legislative scheme of the EPA is consistent with the applicant's proposed construction – whether delegate's decision involved an error of law *Environmental Protection Act 1994* (Qld), s 3, s 5, s 160, s 176, s 182, s 184, s 190, s 191, s 192, s 193, s 194 *Environment Protection and Biodiversity Conservation Act 1999* (Cth) *Judicial Review Act 1991* (Qld), s 20 *Adani Mining Pty Ltd v Land Services of Coast and Country Inc* [2015] QLC 48, referred to

Hill v Woollahra Municipal Council (2003) 127 LGERA 7, cited
Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323, cited
Sinclair v Maryborough Mining Warden (1975) 132 CLR 473, cited
Tarkine National Coalition Inc v Minister for the Environment (2015) 233 FCR 254, cited

COUNSEL: E S Wilson QC, with Dr C J McGrath, for the applicant
R M Derrington QC, Dr G P Sammon, for the first respondent
D G Clothier QC, with S J Webster, for the second respondent

SOLICITORS: Environmental Defenders Office (Qld) Inc for the applicant
Crown Law for the first respondent
Ashurst Australia for the second respondent

[1] The applicant seeks a statutory order of review pursuant to s 20 of the *Judicial Review Act 1991* (Qld) (**JRA**) against the decision of the delegate of the first respondent under s 194(2)(ii) of the *Environmental Protection Act 1994* (Qld) (**EPA**).

[2] The decision of the first respondent was made by a delegate, duly authorized to make the decision as administering authority within the meaning of the section. The delegate's decision under s 194(2)(ii) was to grant an environmental authority under the EPA (an **EA**) to the second respondent (**Adani**) for the development and operation of the Carmichael Coal Mine (**the Mine**). The decision was the "final decision" made under Chapter 5, Part 5 of the EPA.

[3] It is appropriate to describe the significant events leading up to the making of that decision, so as to place the decision within its statutory context and to identify the considerations which the delegate was required to take into account.

[4] **First**, on 26 November 2010 the Mine was declared a project of State significance under s 26(1) of the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWOA**). Under the SDPWOA, Adani was obliged to prepare an Environmental Impact Statement (**EIS**)[1] and the Coordinator-General was then required to issue an assessment report in relation to the EIS[2].

[5] **Second**, in November 2012 Adani submitted the EIS under the SDPWOA. Adani ultimately provided a supplementary EIS and some other information to the Coordinator-General and, on 7 May 2014, the Coordinator-General assessed the EIS in an assessment report which recommended that the Mine be approved subject to conditions.

[6] **Third**, on 24 July 2014 the Commonwealth Environment Minister made a decision under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBCA**) to approve the Mine under the EPBCA subject to conditions. That approval was withdrawn and a new approval, with conditions, was granted on 14 October 2015.

[7] **Fourth**, on 9 July 2013 Adani made an application for an EA in respect of the Mine. The EPA specifies a procedure for public notice of such an application and, in s 160, provides a mechanism for public submissions in response to the application. The applicant availed itself of that process and lodged an objection to the grant of the EA.

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1 Section 32 of the SDPWOA.
2 Section 34D of the SDPWOA.

[8] **Fifth**, on 28 August 2014 the administering authority under the EPA made a decision to issue a draft EA for the Mine to Adani. I make the following observations:

(a) Section 176 of the EPA explicitly prescribed the criteria which the administering authority was obliged to take into account in deciding to issue the draft EA, in these terms:

> (2) In deciding the application, the administering authority must—
>
> (a) comply with any relevant regulatory requirement; and
>
> (b) subject to paragraph (a), have regard to each of the following—
>
> (i) the application;
>
> (ii) any standard conditions for the relevant activity or authority;
>
> (iii) any response given for an information request;
>
> (iv) the standard criteria.

(b) The term "standard criteria" was defined in schedule 4 to the EPA in terms which use very broad language to require consideration, amongst other things, of the EIS, the EIS assessment report, best practice environmental management, and the public interest:

> **standard criteria** means—
>
> (a) the following principles of environmental policy as set out in the Intergovernmental Agreement on the Environment—
>
> (i) the precautionary principle;
>
> (ii) intergenerational equity;
>
> (iii) conservation of biological diversity and ecological integrity; and
>
> (b) any Commonwealth or State government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development; and
>
> (d) any relevant environmental impact study, assessment or report; and
>
> (e) the character, resilience and values of the receiving environment; and
>
> (f) all submissions made by the applicant and submitters; and
>
> (g) the best practice environmental management for activities under any relevant instrument, or proposed instrument, as follows—
>
> (i) an environmental authority;
>
> (ii) a transitional environmental program;
>
> (iii) an environmental protection order;
>
> (iv) a disposal permit;
>
> (v) a development approval; and
>
> (h) the financial implications of the requirements under an instrument, or proposed instrument, mentioned in paragraph (g) as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument; and
>
> (i) the public interest; and
>
> (j) any relevant site management plan; and
>
> (k) any relevant integrated environmental management system or proposed integrated environmental management system; and
>
> (l) any other matter prescribed under a regulation.

(c) The draft EA was 110 pages long and consisted of 139 detailed conditions and extensive rehabilitation requirements. The administering authority considered that the

conditions proposed in the draft EA were reasonable, necessary and desirable to deal with the impacts of the Mine.

(d) The EPA obliged the administering authority to give notice of its decision to the applicant and to any submitters (which was a term defined in schedule 4 to include any person who properly made a submission about the application and, therefore, included the applicant) and also to notify them of their rights to take steps under the EPA which would result in the application for an EA being referred to the Land Court.

[9] **Sixth**, the applicant then elected for its submission objecting to the draft EA to be taken as an objection to the draft EA under s 182 of the EPA and, consequently, Adani's application for an EA was referred to the Land Court pursuant to s 184 for an objections hearing. I make the following observations:

(a) Section 190 of the EPA prescribed the nature of the decision which the Land Court was required to make in these terms:

> **190 Nature of objections decision**
>
> (1) The objections decision for the application must be a recommendation to the administering authority that—
>
> (a) if a draft environmental authority was given for the application—
>
> (i) the application be approved on the basis of the draft environmental authority for the application; or
>
> (ii) the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or
>
> (iii) the application be refused; or
>
> (b) …
>
> (2) However, if a relevant mining lease is, or is included in, a coordinated project, any stated conditions under subsection (1)(a)(ii) … —
>
> (a) must include the Coordinator-General's conditions; and
>
> (b) can not be inconsistent with a Coordinator-General's condition.

(b) Section 191 of the EPA explicitly prescribed the criteria which the Land Court was obliged to take into account in making the objections decision, in these terms:

> **191 Matters to be considered for objections decision**
>
> In making the objections decision for the application, the Land Court must consider the following—
>
> (a) the application;
>
> (b) any response given for an information request;
>
> (c) any standard conditions for the relevant activity or authority;
>
> (d) any draft environmental authority for the application;
>
> (e) any objection notice for the application;
>
> (f) any relevant regulatory requirement;
>
> (g) the standard criteria;
>
> (h) the status of any application under the Mineral Resources Act for each relevant mining tenure.

(c) By those two sections, the Land Court's statutory task, therefore, was to investigate and to weigh all relevant matters and to provide a final recommendation by reference to the draft EA and the conditions in it. The breadth of the considerations which the

Land Court was obliged to taken into account is obvious. Significantly, the "standard criteria" formed part of the considerations which the Land Court was obliged to take into account.

(d) A hearing by the Land Court of objections to the EA, including by the applicant, took place over 21 days from 31 March to 14 May 2015, with further submissions provided on 14 May, 28 May and 15 June 2015. On 15 December 2015, the Land Court's decision was published, supported by 139 pages of reasons, recommending that an EA be issued subject to conditions.

[10] The decision of the Land Court was in evidence before me, but is also to be found at *Adani Mining Pty Ltd v Land Services of Coast and Country Inc* [2015] QLC 48. It suffices to make the following observations about the Land Court's decision:

(a) At an early stage in the reasons, the learned President acknowledged relevant provisions of the EPA which stated the object of the EPA and the nature of the task before her. The specific mention of ss 3 and 5 of the EPA will become significant because the applicant's case under the JRA is founded on those sections. At [24] to [26] the President observed (citations omitted):

> [24] The object of the EPA is set out in s 3 which provides that:
>
> > "3 Object
> >
> > The object of this Act is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development)."
>
> [25] In *Telstra Corporation Ltd v Hornsby Shire Council*, Preston CJ said that ecologically sustainable development, in its most basic formulation, is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". More particularly, his Honour said, ecologically sustainable development includes a cluster of elements or principles. Three of these principles are the precautionary principle, principles of equity and the conservation of biological diversity and ecological integrity.
>
> [26] Section 5 provides:
>
> > "5 Obligations of persons to achieve object of Act
> >
> > If, under this Act, a function or power is conferred on a person, the person must perform the function or exercise the power in the way that best achieves the object of this Act."

(b) After examining relevant statutory definitions, the President adverted specifically to and quoted ss 190 and 191 of the EPA and then the statutory definition of "standard criteria": see at [27] to [33].

(c) After a discussion of the principles which would inform the considerations relevant to the matters the Land Court was to decide, the President stated (at [58], emphasis added):

> [58] **In light of those general principles, and the terms of s 5 of the EPA, I accept that the Court must exercise its powers in the way that best achieves the object of that Act. That is, the Court must recognize that the object of that Act is to protect Queensland's environment while allowing for development that is ecologically sustainable**. The relevant development here is the operation of the mine and associated activities, which will be enabled if the mining leases are granted. The first question for the Court to determine is whether the mine can be developed in an ecologically sustainable way. It is unnecessary for me to determine, at this point, the consequences, if I were to conclude that the development would be unsustainable.

(d) The President's conclusion on environmental matters appeared at [623] to [626] in these terms:

> [623] Section 191 of the EPA requires the Court to consider certain matters in making an objections decision. Those matters have been considered where relevant in the course of these reasons and it is not necessary to repeat my conclusions on those issues in detail.
>
> [624] I have concluded that:
>
> - the threat to [a particular groundwater system referred to as the Doongmabulla Springs Complex or DSC] and the [waxy cabbage palm] are likely to be appropriately managed by the conditions imposed in the draft EA and the EPBCA approval;
> - further conditions should be inserted into the draft EA to protect the [black-throated finch, or BTF];
> - there will be no increase in Scope 3 [carbon] emissions as a result of the mine;
> - the Scope 1 and Scope 2 [carbon] emissions generated by the project will account for 0.01% of the world's or 0.25% of Australia's remaining carbon budget having regard to the 2°C target. There was no evidence beyond that as to the impact of those emissions on the environment.
>
> [625] Although there will be environmental damage caused by the mine, I consider that the adverse consequences are outweighed by the benefits that will flow from the development of the mine.
>
> Final Conclusions
>
> [626] I have considered the evidence in some detail and have come to the conclusions set out above. My overall conclusion is that I should recommend that the mining lease applications be granted and the environmental authority application be approved, subject to the inclusion of additional conditions relating to the protection of the BTF as set out in the Orders.

[11] **Finally**, the "final decision" stage was reached. In addition to providing its decision in the form of a recommendation to the administering authority, s 192 of the EPA obliged the Land Court to give a copy of the decision to the Ministers administering the *Mineral Resources Act 1989* (Qld) and the SDPWOA. Section 193 prescribed a 10 day time limit within which those Ministers must advise the administering authority of any matter they considered might help the administering authority to make the final decision, although the time limit was capable of being extended by agreement. Thereafter:

(a) Section 194(2)(a) of the EPA prescribed the nature of the decision which the administering authority was required to make in these terms:

> (2) The administering authority must decide—
>
> (a) if a draft environmental authority was given for the application—
>
> (i) that the application be approved on the basis of the draft environmental authority for the application; or
>
> (ii) that the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or
>
> (iii) that the application be refused; or

(b) Section 194(3) obliged the administering authority to make the final decision on the application within 10 business days from the end of the period within which the Ministers had to give the advice referred to in s 193.

(c) When, as was the case in relation to the Mine, a draft EA was given for the application, s 194(4) explicitly prescribed the criteria which the administering authority was obliged to take into account in making the final decision, in these terms:

> (4) In making the decision, the administering authority must—
>
> (a) have regard to—
>
> (i) the objections decision, if any; and
>
> (ii) all advice, if any, given by the MRA Minister or the State Development Minister to the administering authority under section 193; and

(iii) if a draft environmental authority was given for the application—the draft environmental authority; and

(d) It is evident from the wording of s 194(4)(a) that the criteria to be taken into account were far narrower than:

(i) the criteria set out in s 176(2) to be taken into account by the administering authority in deciding to issue the draft EA; and

(ii) the criteria set out in s 191 to be taken into account by Land Court in making the objections decision.

(e) In particular, the evident intention was to limit the considerations which the administering authority was to take into account to the three matters listed in s 194(4)(a). Notably, the administering authority was not required to have regard to the "standard criteria".

(f) This contrasted starkly with the considerations which would have had to be taken into account if a draft EA had not been given for the application. In such circumstances s 194(4)(b) would require the administering authority to –

(i) comply with any relevant regulatory requirement; and

(ii) subject to subparagraph (i), have regard to the following—

(A) the application;

(B) any standard conditions for the relevant activity or authority;

(C) any response given for an information request;

(D) the standard criteria.

[12] The final decision was made on 2 February 2016, when the delegate issued a final EA to Adani pursuant to s 194(2)(ii) of the EPA . The delegate decided that the final EA was approved, but on conditions different to the conditions in the draft EA in that the conditions included:

(a) the conditions in the draft EA; and

(b) the recommended conditions of the Land Court as altered in accordance with the expert ecological advice which the delegate had obtained.

[13] On 29 March 2016, having received a request from the applicant so to do, the delegate provided her reasons for her decision. I make the following observations about those reasons:

(a) The delegate first recorded the relevant chronology of events, including the fact of the issue of the draft EA by the administering authority under the EPA and also the Land Court proceedings and the fact and outcome of the objections decision by the Land Court.

(b) She then identified and summarized the legislative framework, making specific reference to the relevant terms of ss 190 to 194, noting ultimately the three matters to which s 194(4) required her to have regard.

(c) The delegate specifically stated that she had considered the draft EA and the Land Court objections decision. She noted she had considered the draft EA specifically in the context of the Land Court objections decision. She noted that no advice was received from relevant Ministers under s 193.

(d) She found (emphasis added):

> **Having regard to the Land Court objection decision, I decided that if the EA was to be approved in accordance with the Land Court's recommendation, all of the conditions recommended by the Land Court should be imposed, but additional conditions recommended for condition I6 should have with more definitive wording (by the use of the word "must" rather than "should") to ensure the conservation of the species across the ML area and approved offset areas.** The EHP expert advice sought advised that the BTF is possible locally nomadic with its movements changing according to spatial and temporal variation in resources. Therefore EHP ecologists recommended that multiple years of surveys would be required to develop management actions to account for this variation. Expert advice recommended effort of three times the generation time of the BTF (approximately 3.5 years), which equates to 10 years (as per Garnett et. al. 2010).
>
> **As such, I considered it would be appropriate to adopt the Land Court objection decision recommendations for the insertion of conditions in condition I6 for the BTF species management plan with revised wording as follows**:
>
> [The delegate then specified the revisions she would make to the condition of the Land Court objection decision.]

(e) Her conclusion was expressed under the heading "Reasons for Decision" in these terms:

> After careful consideration of the material and other evidence identified above, and having made the above findings of fact, I decided to approve the application for a site-specific EA … for Carmichael Mine, on stated conditions that are different to the conditions in the draft EA, under section 194(2)(a)(ii) of the EP Act.
>
> I consider that the monitoring, research, plans, recording, reporting and mitigation measures required by the conditions of the EA will ensure there are sufficient measures in place to manage the environmental issues and impacts resulting from mining activities proposed as part of the Carmichael Mine.

(f) It is plain that the delegate specifically considered the EA and the Land Court objections decision. Further, it seems to me that she must be taken to have decided to do that which she referred to as a possibility in the first sentence of the passage I have quoted at (d) above, namely to approve the EA in accordance with the Land Court's recommendation, together with the imposition of all the conditions recommended by the Land Court but with some alterations.

[14] On 26 April 2016 the applicant filed its application for a statutory order of review of the delegate's decision. The only ground relied on was s 20(2)(f) of the JRA, namely "that the decision involved an error of law (whether or not the error appears on the record of the decision)". The applicant contended that the decision involved an error of law for these two related reasons:

(a) Ground 1 (emphasis added):

> The decision involved an error of law in that the delegate misconceived sections 3 and 5 of the EPA, in particular **the delegate failed to appreciate that she was required to consider and be positively satisfied her decision** to approve (with or without conditions) or refuse the application for the environmental authority **was the best way to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological process on which life depends**.

(b) Ground 2 (emphasis added):

> The decision involved a jurisdictional error in that **the delegate failed to apply to herself to the real question to be decided pursuant to section 5** of the EPA when performing the function and exercising the power under section 194 of the EPA. **Section 5 required her to be positively satisfied that in making the decision she was performing her function and exercising her power in the way that best achieves the objects of the EPA.** This required her to consider and determine whether, in performing the function and exercising the power in that way, she would be adopting the best way of protecting Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which

> life depends. However, the delegate did not do this. **She did not consider and determine this question**.

[15] I do not think that the ss 3 and 5 are to be construed in the way for which the applicant contends.

[16] Section 194 of the EPA conferred on the administering authority the function or power of making the final decision on Adani's application for an EA in respect of the Mine. Specifically it was the function or power of –

(a) deciding between three specified options, namely:

(i) that the application be approved on the basis of the draft EA; or

(ii) that the application be approved, but on stated conditions that were different to the conditions in the draft EA; or

(iii) that the application be refused;

(b) (in light of the fact that the no advice was provided from the Ministers pursuant to s 193) having regard to two specific matters, namely:

(i) the draft EA; and

(ii) the objections decision from the Land Court.

[17] The administering authority was obliged by s 5 to make the final decision which I have described "**in the way** that best achieves the object of the Act", namely the object of ecologically sustainable development as defined in s 3. However, the language of s 5 is not language which is calculated to require a particular finding or reach a particular state of positive satisfaction as a precondition to a lawful performance of the function or exercise of the power. Nor is it language which obliges the attainment of a particular objective outcome. Rather it is language which is specifically expressed at a high level of generality because it is language directed to impose a duty on the decision maker which regulates the way in which the decision maker goes about making the decision. It requires the decision maker to make the decision **in the way** that the decision maker conceives is the way that best achieves ecologically sustainable development.

[18] That conclusion concerning the legislative purpose of ss 3 and 5 is not consistent with the applicant's argument. Its correctness is also supported by a consideration of the place within the EPA of, on the one hand, ss 3 and 5, and, on the other hand, s 194. I accept the submission by Adani that:

> Section 4 of the EPA describes how the object stated in s.3 is to be "achieved" and relevantly provides that it is achieved through an "integrated management program that is consistent with ecologically sustainable development". The program is cyclical and involves four different "phases". A decision under s.194 is part of "phase 3", which is achieved by (inter alia) "ensuring all reasonable and practicable measures are taken to protect environmental values from all sources of environmental harm". That is, s.4 expressly recognises that specific mechanisms are set out throughout the EPA which are themselves formulated to see that the overall object in s.3 is "achieved".

[19] The applicant's argument seeks to attribute to s 5 the intention, effectively, to add a new subparagraph (iv) to s 194(4)(a), namely "what best achieves the object of this Act". But that is not consistent with the structure of the EPA. The final decision required by s 194 in the present context was not a decision which was at large. It was not a decision which required the delegate to consider afresh all the matters including the "standard criteria" and other criteria which were assessed (1) at the time of the decision made pursuant to s 176 to issue the draft EA; or (2) at the time of the objections decision made pursuant to s 191 by the Land Court. Nor was it a decision which required consideration afresh of all the evidence which the previous decision makers had before them on those matters. The evident intention

of the EPA was that the detailed work in that regard had already been done by the time the s 194(4)(a) decision came to be made. That much is clear from the very short time frame within which the decision was required to be made and the constraints which s 194(4)(a) imposed on the matters to which the decision maker was required to have regard.

[20] Legislation structured in the way s 194(4)(a) was structured limits the mandatory considerations which a decision maker is required to take into account. In *Tarkine National Coalition Inc v Minister for the Environment* (2015) 233 FCR 254 at [27] Jessup J (Kenny and Middleton JJ agreeing) explained the role of a Minister as decision maker where a statute specified the range of matters that the Minister was to take into account by reference to specific concrete documents or other similar existing artefacts, in these terms (emphasis added):

> Thirdly, while the range of things that the Minister was to take into account under subs (2) was extensive, with the exception of those referred to in paras (a) and (e), each was a concrete document or some similar existing artefact. **In effect, what the Minister had to take into account were the contents of those documents or artefacts**. This approach to regulation is to be contrasted with a situation in which the things to be taken into account were identified by description, or generically, such as, for example, where a decision-maker was required to take account of the condition of the habitat of a particular species. Subject to the exceptions mentioned, **the scheme** of s 136 **was one in which it was assumed that specific subjects of this and similar kinds were already dealt with in the documents or artefacts referred to. The role of the Minister was to take into account the things that were before him in this way, rather than being either obliged or entitled to undertake additional research or investigations**.

[21] When one construes ss 3, 5 and 194(4)(a) properly, one is driven to an appreciation that no legal error was made by the delegate of the administering authority in making the final decision in the way she did. She did not consider afresh the full gamut of the considerations which had been considered on previous occasions. But, as I have explained, she was not required to. The delegate addressed the considerations she was required to address and did so in the way she thought accorded with the s 3 object in compliance with her duty under s 5. I observe:

(a) As I have already indicated, the President of the Land Court explicitly adverted to ss 3 and 5 of the EPA and specifically stated she accepted that she should seek to make the objections decision in the way that best achieved the object of that Act stated in s 3 and that she had to recognize that the object of that Act was to protect Queensland's environment while allowing for development that is ecologically sustainable. The President of the Land Court, as had the issuer of the draft EA before her, considered the wide range of matters which the relevant provisions of the EPA had required them to consider.

(b) The delegate's reasons reveal that she considered the draft EA and the Land Court's reasons. She was necessarily aware of ss 3 and 5. There is no reason to think she did not comply with the duty imposed by s 5. Moreover, her affidavit evidence before me was (emphasis added):

> **I took into account and applied the objects of the [EPA] as stated in section 3 of the [EPA], when making my decision to approve the Environmental Authority to Adani.** The purpose of the conditions of the Environmental Authority is to balance protection of the environment against the nature of the Carmichael Coal Mine proposed by Adani, and to minimise and mitigate the potential adverse environmental effects of that Mine to the receiving environment. **I am regularly called upon to make decisions under the [EPA] and I am aware of the objects of that Act. I am also aware that the Act requires that when functions are to be performed or powers are to be exercised under the Act, they are to be performed or exercised in the way which best achieves the objects. I was aware of these matters at the time when I made the decision to approve the Environmental Authority to Adani**.

(c) I have already explained why I have concluded that the delegate's approach was to approve the EA in accordance with the Land Court's recommendation, with some variations the content of which is presently irrelevant. This could only mean that the delegate approved the course of reasoning of the Land Court, except where she departed from it. I would, even without reference to the delegate's affidavit, infer that the delegate was satisfied, just as the Land Court was satisfied, that her decision was a decision which accorded with ss 3 and 5. The correctness of that inference is confirmed by her affidavit. Unlike the position of the mining warden considered by the High Court in *Sinclair v Maryborough Mining Warden* (1975) 132 CLR 473, there is no support for the proposition that the delegate was laboring under any misapprehension as to her duty.

(d) It is often legitimate to infer from the fact that the reasons of an administrative decision maker do not refer to a matter, that the matter was not considered to be material: cf *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at 346 per McHugh, Gummow and Hayne JJ. But for the reasons expressed in the previous subparagraph, no argument along those lines can be accepted in this case. It was unnecessary for the delegate to refer expressly to ss 3 and 5: *Hill v Woollahra Municipal Council* (2003) 127 LGERA 7 at [53].

(e) I reject the applicant's contentions that the delegate's decision was attended by legal error.

[22] The application for statutory order of review is dismissed. I will hear the parties on costs.