Environmental Defenders Office

Queensland Law Reform Commission – Mining Lease Objections Review

Preliminary Submission

26 June 2024

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

Queensland Law Reform Commission
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Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Executive Summary

The Environmental Defenders Office Ltd (**EDO**) welcomes the opportunity to contribute to the inquiry by the Queensland Law Reform Commission (**QLRC**) into the mining objection hearing process in Queensland. Thank you for accepting this submission

EDO has been working within the mining objection process for decades, assisting many clients to understand, to self-represent and to participate with our representation in this process. Through this experience we have found that the current process for the Land Court merits objection hearing generally provides for a procedurally fair and appropriate assessment of the application put forward by a proponent for some of the largest environmentally impactful projects proposed in Queensland. However, there are various tweaks that could be made to the framework providing for the process which would greatly enhance clarity, fairness, efficiency and effectiveness of the objection processes, which we have detailed below for the consideration of the QLRC.

From our experience assisting many members of the public, First Nations, individuals, and public interest organisations engaging with the mining objection hearing process, we consider that these recommendations would greatly improve the ability for all stakeholders in the community to participate in this important process.

Below we have provided a summary of our recommendations that are formed from our experience, followed by a more detailed discussion of these recommendations. Should any element be unclear, or should the Commission require further information or discussion with respect to any of these recommendations, please do let us know and we will gladly assist.

In this submission, we make 8 overarching recommendations in response to terms of reference, along with a concise commentary on the processes in other jurisdictions which are summarised in the following section.

Summary of EDO Recommendations

1. Independent court-based merits review must be retained

1.1. The Land Court merits review process must be retained to ensure the final determination on applications is made by an independent judiciary, free of political influence and based on robust scientific evidence tested by independent experts.

2. **Land Court role should be post-government judicial decision, with an automatic stay on a proponent acting on the decision pre-court determination**

    2.1. The Land Court's role best enshrines the benefits of the separation of powers through undertaking merits assessment and final determination post-government decision.

    2.2. To ensure procedural fairness and an effectual process, the decisions on the environmental authority and mining lease must be automatically stayed until the appeal period is exhausted or any appeal is decided by the Land Court.

3. **Clear and centralised public notification through the government should be mandated**

    3.1. Public notification must be centralised through one Department to ensure that the community knows when public notification takes place for all processes, the deadline for submissions, and knows when rights to participate in any objection hearing are enlivened.

4. **Open standing for community must be retained**

    4.1. At minimum, open standing for third party appeal rights must be retained.

    4.2. Clarity is needed as to which submission processes give rise to the right to participate in merits assessment process.

    4.3. Consideration should be given to any submission on the mining lease application, environmental authority application or environmental impact statement giving rise to standing to object to a mining lease application and/or the environmental authority application in the Land Court.

    4.4. Land Court should have broad discretion to grant standing where an objector has not complied with the formal requirements.

    4.5. Objectors should be able to fully participate in the process without being constrained by any previous submissions.

5. **Repeal the extensive powers of the Coordinator-General to mandate conditions**

    5.1. Repeal the extensive powers of the Coordinator-General to overrule all other departments and the Land Court through providing mandated conditions – hindering decision making and wasting resources of all stakeholders.

6. Proactive disclosure of material should be required from the Applicant and the relevant Queensland government departments

6.1. Legislatively enshrine the requirement for the Applicant to proactively disclose all material relevant to its application and for the government to provide any material it relied on in making its decision to provide for fairness for all parties in the Land Court process.

7. Costs in the Land Court should generally be retained

7.1. The general rule that each party bears their own costs should be retained but enhanced by the inclusion of a requirement to consider the public interest in the exercise of the Courts discretion.

8. The reforms to the transcript process should be retained, however further reforms regarding timing of delivery of transcripts to all parties would improve procedural fairness

8.1. The reforms to the transcript process should be retained, although further reforms, particularly to remove discrepancies in the timing of delivery of transcripts to those on financial hardship fee waivers and all other parties, to improve procedural fairness.

9. Comparison with other jurisdictions

9.1. At minimum the current objection hearing process should be retained and should not be retrograded where other jurisdictions may not have the benefit of meaningful merits assessment for mining projects.

9.2. Alternatively, if considering moving to a post-government judicial decision process, the New South Wales Land and Environment Court class 1 merits review jurisdiction is analogous to other Queensland processes such planning appeals in the Queensland Planning and Environment Court and may be informative.

1. Independent court-based merits review must be retained

1.1 The Land Court merits review process must be retained to ensure the final determination on applications is made by an independent judiciary, free of political influence and based on robust scientific evidence tested by independent experts.

A formal court-based merits review process must be retained to ensure:

- decisions on mining lease applications and associated environmental authorities are based on robust scientific evidence that is rigorously tested by independent expert witnesses through the conclave process and cross-examination;
- merits review of the application is undertaken by an independent court, free of political influence, to ensure the most informed decision is made; and
- parties are on equal footing, where moving to a less formal process may disadvantage self-represented objectors.

However, measures should be introduced to reduce processes which drain community (and all party) resources, such as extensive court ordered mediation requirements where there is unlikely to be a negotiated outcome on the parties' positions. In our experience, excessive procedural steps can cause unnecessary delay in resolution, without improving the outcome; draining stakeholder and community resources.

2. The Land Court's role should be post-government judicial decision, with an automatic stay on a proponent acting on the decision pre-determination

2.1 The Land Court role best enshrines the benefits of the separation of powers through undertaking merits assessment and final determination post-government decision

The Land Court merits assessment process is most appropriately positioned *after* the government decisions on the environmental authority and mining lease. Amending the nature of the Land Court's role and bestowing on the Court the powers to make the final decision on the mining lease applications and associated environmental authority is appropriate and justified because it:

- Improves development assessment timelines and simplifies the process by removing unnecessary additional steps after the mining objection including further decisions by the Minister and Department of Environment, Science and Innovation (**DESI**).
- Achieves consistency with other development approval processes in the Land Court and Planning and Environment Court's jurisdictions. For example, water licence appeals under the *Water Act 2000* (Qld) (**Water Act**), or coal seam gas appeals under the *Environmental Protection Act 1994* (Qld) (**EPA**), are both conducted via merits review post-approval. In addition, development permits are also subject to a post-government decision merits appeal process under the *Planning Act 2016* (Qld) (**Planning Act**).
- Holding a hearing de novo on an original decision of government is the usual and proper role of merits review. Limiting the Land Court to undertaking a full merits review that only leads to the Court making recommendations to the final decision makers is an anomaly which complicates the process and allows for multiple review points, increasing the time, uncertainty, costs and resources for all parties involved.

- Amending the Land Court's role and functions streamlines and simplifies the appeal process to the Land Appeal Court. The current avenues of review to the Queensland Supreme Court increases the time, complexity and costs to all parties.
- In a post-government decision model, all parties would be able to fully participate and respond to the material before the final decision maker and court.
- Allows an appeal to be informed by the most up to date material regarding the application rather than constrained by objections that were made in response to material provided sometimes years in advance of the matter being referred to the Land Court. This is beneficial to all stakeholders because it means objections are relevant to the final application and materials provided in support.

Although, we flag that if the process is similar to the current appeals process under the EPA or Water Act, there are positive and negatives to the current 'two-step' appeal process whereby an internal review of the original decision is a pre-requisite to commencing any appeal.

The positives include that the internal review gives the decision-maker the opportunity to remake the decision in response to material provided in an application for internal review, either by refusing, approving or amended the conditioning which may resolve issues without the need for any appeal.

Conversely, in our experience the result of the internal review is that the reviewer generally upholds the original decision. As such, the internal review process often fails to result in the early resolution of the matter and can instead delay the resolution of any appeal.

Another approach would be to implement a process similar to the Planning Act, whereby there is no internal review process, rather an appeal is commenced within the appeal period after the decision is made.[1] Submitters are not limited to the contents of their original submission on the development application, they may appeal on the grounds that are relevant at the point of the appeal after the decision is made, with all information available to them that was before the decision maker.[2] We consider this is a more appropriate and fair procedure that does not unduly limit community members from full participation in the appeal of a development decision.

2.2 The decisions on the environmental authority and mining lease must be automatically stayed until the appeal period is exhausted or any appeal is decided by the Land Court.

If the QLRC recommends a shift from a non-binding recommendatory function to a binding judicial appeal process, this must be coupled with a recommendation that the original decision(s) subject to merits review should not take effect unless the statutory appeal period or appeal process is exhausted. If the original decision permits potential environmental damage to occur before objections are considered, the purpose and intent of the mining objection hearing process is undermined.

[1] *Planning Act 2016* (Qld) (**Planning Act**), s 229.
[2] Planning Act, s 230(1)(b).

For example, the stay provisions under the Water Act and EPA are not appropriate as they unduly place onus on community members to make a stay application to prevent the proponent from acting on a decision while an appeal is heard and determined. In our experience, community members then face the need to indemnify the proponent against any risk of financial loss while the appeal is heard and the activities are stayed. This either leaves the proponent able to act on their authority while the matter is being heard and determined, rendering the process nugatory, or forces community members utilising their appeal rights to discontinue the proceeding early.

Rather, the more efficient and appropriate way of ensuring the utility of the appeal process is for the statute to specifically state that the decision does not take effect until any appeal is decided by the Land Court.

3. Clear and certain public notification should be provided through the government in a centralised location, not via proponents

3.1 Public notification must be undertaken through one Department to ensure that the community has certainty as to when public notification takes place and the deadline for submissions, and ideally also have clarity as to when rights to participate in any objection hearing are enlivened

Currently there is significant confusion in the community as to where to find out if a project of interest is being notified, when notification will occur and what point of notification will actually give rise to the legal right to participate in the mining objection hearing process. In addition, simple matters such as putting the timeframe by which submissions must be provided to the mining lease application on the public notice are not always being undertaken.

The EDO has seen this failure to specify the deadline for submissions lead to many First Nations and other community members missing the cut off date and therefore losing their right to have their views heard on a development of concern to them. There are already sufficient impediments to First Nations and other community members with respect to having the time, capacity and resources to participate in the submission and objection hearing processes. The lack of clarity that exists around public notice currently is very easily rectified. Current processes are significantly hampering the community's ability to effectively use their legal rights to have their views heard on development of concern to them, meaning the legal process is not operating effectively.

We recommend the following simple changes that can greatly improve the effectiveness of the public notification processes:

- When an application or associated environmental material is publicly notified, all material should be collated in one spot on a government website along with the legislative deadlines.
- In addition to providing notification via a centralized government website, the materials should also be publicly notified on the applicant's website, social media, the property and a local newspaper, to ensure the various likely sources for the public to become aware of a project notice period are utilised. Understanding that regional and remote communities do not always have access to reliable internet, the department where present in regional centers should also have a notice board and application material available for inspection.

- The public should be able to sign up to receive email notifications from DESI to enable them to be automatically notified of proposed developments including when the public comment period opens and closes. DESI already includes this function in some areas, such as the public notices and consultations webpage.[3]
- The public notice must specify the deadline, with exact time, for submissions to be considered and whether participation gives rise to objection rights in the Land Court.
- If the current pre-government decision role is continued for the Land Court, the information stage of assessment must be required to conclude before the notification stage may commence. During the information stage, DESI is able to request further information to inform its decision.[4] Currently the notification stage may commence at any point after the application stage ends and potentially before this process has concluded.[5] This means submitters may need to make their submissions without having regard to any information yet to be received on request from the assessing agency.
- To improve transparency and build a culture that promotes human rights, the relevant decision-makers should be required to provide a statement of reasons for their decision including human rights impact assessment, and any material that they relied on in making the decision in relation to the following:
  (a) to recommend the application be approved or approving the application; or
  (b) not to require an environmental impact statement (**EIS**).

The above material should be publicly available as soon as the decision is made.

Noting that if an application proceeds to an objection hearing, the current Practice Direction does not require the department to provide reasons rather, they just need to "explain by reference to each ground in the objection notice where and how the draft environmental authority addresses that ground of objection."[6]

4. Open standing and community participation must be maintained

4.1 At minimum, open standing for third party appeal rights should remain. This is consistent with the government election commitment to reinstate third party notification and objection rights and the terms of reference for the review.

4.2 To make it procedurally easier for community members to have the opportunity to participate in the process, any submission on the mining lease application, environmental authority application or environmental impact statement should give rise to standing to object to a mining lease application and/or the environmental authority application in the Land Court.

[3] Department of Environment, Science and Innovation, 'Public notices and consultations', *Our department* (Web Page, 2 April 2024) <https://www.des.qld.gov.au/our-department/public-notices>.
[4] *Environmental Protection Act 1994* (Qld) (**EPA**) s 140.
[5] EPA, s 151.
[6] Land Court Practice Direction 6 of 2018, (**LC Practice Direction**) p 7 at [34].
https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/565018/lc-pd-4of2018.pdf

4.3 The Land Court should also have the discretion to grant standing where an objector has not complied with the formal requirements.

Currently, there are different procedural requirements and separate processes under the *Mineral Resources Act 1989* (Qld) (**MRA**) and the EPA that give rise to a person's right to object to a mining lease application and/or an environmental authority application. This is further complicated by the different standing pre-requisites under the EPA where for some projects standing will arise if a person made a properly made submission on:

- the environmental authority application;[7] or
- the EIS, in circumstances where the public notification stage does not apply to an environmental authority application, in which case the submission on the EIS is treated as a submission about the application.[8]

The current framework has resulted in significant confusion as to which submission would give rise to standing to object to the application in the Land Court, particularly in circumstances where there has been an overlap in the public notification period for the EIS and the environmental authority application.

For example, in relation to the coordinated project, Winchester South, Whitehaven publicly notified the:

- original draft EIS between 4 August 2021 and 15 September 2021 (and then later the revised draft EIS between 21 November 2022 and 19 December 2022 at the request of the Coordinator-General);[9] and
- mining lease applications and associated environmental authority application together between 16 August and 24 September 2021 (at 4.30pm (AEST)).[10]

This is problematic for several reasons including:

- Some community members were not aware that there were three submissions that needed to be made in respect of the proposed project including a submission on the EIS, mining lease application and environmental authority application. A submission on the environmental authority application should occur after the EIS is accepted as final, although there is nothing in the EPA to that effect. As such, community members that only made a submission on the draft EIS lost their procedural rights to later object to the application in the Land Court, which cannot under the current framework be remedied by the Land Court.
- For community members who made submissions on the mining lease applications and the environmental authority application, they did not have the benefit of the final EIS on which to base their grounds of objection and facts and circumstances in support. This is a significant issue under the current framework as an objector is constrained by the content

[7] EPA, s 182.
[8] EPA, s 150(3).
[9] https://www.statedevelopment.qld.gov.au/coordinator-general/assessments-and-approvals/coordinated-projects/completed-projects/winchester-south-project
[10] https://whitehavencoal.com.au/wp-content/uploads/2021/08/Winchester-South-Project_Combined-Public-Notice.pdf

of their objection and may be precluded from agitating issues that might be identified in the final EIS as discussed in more depth below.

- For the community to be required to make three separate objections/submissions for a project around the same time is overly burdensome, particularly where there are different procedural requirements for each submission to be taken as properly made.
- Legislation should be clear and easy to understand. Unfortunately, the statute as drafted acts as a barrier to standing in certain circumstances.

Early consultation and meaningful community participation in projects should be promoted and encouraged particularly on any EIS to ensure that the best environmental outcomes are achieved.

Furthermore, the Land Court's discretion to allow community members to participate in the process where they have failed to make a properly made submission is constrained. Currently under the MRA, the substantial compliance discretion as drafted does not extend to the filing of an objection on the same day if it was filed after 4:30pm.[11] The Land Court should have the discretion to allow an objection to be heard from anyone whose interests are impacted by the applications, even if they did not put in a submission.

The process for having an objection to a mining lease application or submission on an environmental authority application referred to the Land Court could also be streamlined to remove any unnecessary administration on the part of all parties.

For example, if there is a shift to a post-government decision process and a person receives an information notice of that decision (because they made a submission when the mining lease or environmental authority applications or the EIS was publicly notified), then the grounds of any appeal filed in the Land Court could be in relation to the application for an environmental authority and/or mining lease rather than the current process of the mining lease objections and environmental authority objections being referred to the court separately by two different departments.

4.4 Objectors should be able to fully participate in the process without being constrained by any previous submissions on the EIS, environmental authority application or mining lease application, particularly if the applicant seeks to rely on new material or material that was not publicly available to support their application.

Currently objectors are unnecessarily limited to only raising the existing grounds raised in their original objection/ submission when their objection is referred to the Land Court to conduct the mining objection hearing. These grounds are drafted prior to the draft environmental authority conditions and any further updates to the application through the assessment process, and thus may be outdated.

In practice, these objections and submissions to applications can occur years in advance of the matter being referred to the Land Court. Despite this, objectors are currently constrained by the

[11] *McAvoy & Anor v Adani Mining Pty Ltd & Ors* [2014] QLC 32.

content of their objections under the MRA even in circumstances where the Applicant seeks to rely on new evidence in support of its applications.

Objectors should have the opportunity to base their objection on the latest material to ensure that the process is efficient and effective for the benefit of all parties. Currently, objectors often need to draft broad grounds of objection for fear of not being able to lead expert evidence later or not being heard on what later becomes a key issue. Particularly when the EIS is not finalised prior to the notification of the environmental authority application.

Objectors should not be constrained by the content of their objection to a mining lease application or submission on an environmental authority application. Some flexibility is necessary to allow issues that arise during the process to be fully ventilated before the Court, particularly in circumstances where the Applicant seeks to rely in new evidence that was not available during the public notification period.

If moving to a post-government decision model, then there should be an opportunity to set out the grounds of appeal and facts and issues in support without being constrained by any previous submissions or objections or internal review process, similar to the appeals process under the Planning Act as discussed above at recommendation 2. Noting that there should be sufficient time to lodge an appeal, particularly where there is material that has not been previously publicly notified.

5. Repeal the extensive powers of the Coordinator-General

5.1 Repeal the extensive powers of the Coordinator-General to overrule all other departments and the Land Court through providing mandated conditions – hindering decision making and wasting resources of all stakeholders

If the Project is declared a coordinated project under the *State Development and Public Works Organisation Act 1971* (Qld) requiring the preparation of an EIS under that framework, then the Coordinator-General in evaluating the EIS can mandate or recommended conditions for the project.[12] Under the EPA, the administering authority for the environmental authority or draft environmental authority must adopt the conditions proposed by the Coordinator-General, and cannot make any other conditions which are inconsistent with a Coordinator-General's condition.[13] Similarly, the Land Court also may not make recommendations which are inconsistent with a Coordinator-General's condition in its objection decision.[14]

The restrictions on inconsistency with Coordinator-General conditions means that there are significant limitations on the submissions that may be raised by the community. This is particularly problematic where new evidence arises during the hearing that the Coordinator-General did not consider as part of the evaluation report and for imposing conditions.

Often parties have to embark on complex legal arguments as to whether proposed conditioning is inconsistent with the Coordinator-General's conditions. Removing the prohibition on

[12] *State Development and Public Works Organisation Act 1971* (Qld)(**SDPWO Act**) ss 34D, 39, 45, 47C, 49B, 49E or 49G.
[13] *Environmental Protection Act 1994* (Qld), s.205.
[14] *Environmental Protection Act 1994* (Qld), s190.

inconsistency would reduce complexity for all parties and the considerable time and expense spent on legal battles over the extent of any inconsistency.

Furthermore, making the Land Court's recommendation subject to a change application is not the solution as the Land Court's recommendation is not currently binding on the Coordinator-General, nor do objectors have the automatic right to make submissions on the change application.

This could be remedied by moving to a post government decision appeal process, whereby the Land Court's decision is a final and binding judicial decision that is unfettered by executive decision-making.

6. Proactive disclosure of material should be required from the Applicant and Statutory party

6.1 Legislatively enshrine the requirement for the applicant to proactively disclose all material relevant to its application and for the government to provide any material it relied on in making its decision.

There should be a legislatively enshrined requirement for:

- the Applicant to proactively provide all material relevant to its application in advance of the first directions hearing; and
- the government to provide any additional material it relied on in making its determination along with an information notice that sets out any reasons for its decision including any human rights impact assessment.

Currently, the Court does not have the power to order disclosure of documents by any person, including an active party.[15] The Land Court and the parties should have access to all the material that were before the original decision-maker and material that is relevant to the application. It is procedurally unfair and puts objectors (and the statutory party) at an extreme disadvantage in reviewing the factual claims of the proponent.

To facilitate efficient operation of the hearing in support of the requirements of the Court role in mining objection hearings, the Land Court should have the power to order disclosure of other relevant information such as groundwater, noise and dust monitoring data. We note that this issue of the Land Court not being able to make an order for disclosure can be remedied if the Land Court is given the powers to make the final decision on the application if the process shifts to a post-government decision model. While the current mining objection hearing practice direction provides direction regarding an objector's access to application material, it allows the Applicant to apply to restrict access to documents without allowing the objectors the opportunity to respond to that request.[16] This is procedurally unfair. Furthermore, the practice direction is not sufficient to extend the Land Court's jurisdiction.[17]

[15] LC Practice Direction; *BHP Billiton Mitsui Coal Pty Ltd v Isdale* [2015] QSC 107.
[16] LC Practice Direction, p 7 at [28]-[33].
[17] *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection* [2016] QLC 29.

7. Rules as to costs in the Land Court

7.1 The General rule that each party bears their own costs should be retained but enhanced by the inclusion of a requirement to consider the public interest in the exercise of the Courts discretion.

Currently, the general rule for mining objection hearings is that each party bears their own costs.[18] EDO supports this as a key facet of ensuring public interest litigation is not hindered through a fear of an adverse costs order. EDO suggests that this could be enhanced by including the requirement to consider the public interest nature of the process in the exercise of the Court's discretion to award costs. This is necessary and appropriate because:

- often individual participants that are objecting to mining leases, environmental authorities and other relevant authorities are doing so on the basis of grounds that are in the public interest;
- often community participants do not have significant resources, either as self-represented litigants or where represented, particularly compared to resource proponents and government departments;
- specifically providing for a consideration of the public interest nature of the parties' grounds will assist in ensuring this is a facet that is considered with respect to any costs order considered, and any discretion with respect to a costs order that may turn on this fact may be enlivened.

8. Access to mining objection hearing transcripts

8.1 Reforms to the transcript process should be retained, although further reforms to the process of accessing transcripts could be implemented to ensure procedural fairness.

It is acknowledged that recent changes to the transcript process, though the introduction of QTranscripts as well as some other procedural changes, have led to improved transcripts outcomes. In particular, significant improvements have been made to transcript turnaround times and to fee-waiver approval times.

One necessary and fundamental change that is still required is that all parties to a dispute who have requested access to a transcript, whether by commercial or fee-waiving methods, are supplied with transcripts at the same time, to ensure procedural fairness.

9. Comparison with other jurisdictions

9.1 At minimum the current objection hearing process should be retained and should not be retrograded where other jurisdictions may not have the benefit of meaningful merits assessment for mining projects.

9.2 Alternatively, if considering moving to a post-government judicial decision process, the New South Wales Land and Environment Court class 1 merits review jurisdiction is

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[18] *Land Court Act 2000* (Qld), s 52C.

analogous to other Queensland processes such planning appeals in the Queensland Planning and Environment Court and may be informative.

Queensland sets the benchmark for community participation in decisions regarding mining. This is a particular feature of decision making around mining where minerals are a public resource owned by the State, that should only be exploited for public good. Further, the significant impact mining can cause to the environment, First Nations interests, communities and local, regional and state economies means community participation is essential to ensure accountability of decision makers to fulsome consideration of these impacts in assessment. At minimum, it is important that the current model is retained to ensure that meaningful community participation in the process is maintained.

There are many benefits to Queensland's framework which are not enjoyed by other jurisdictions and which we encourage are retained. The hearing of objections to mining lease applications and associated environmental authorities is done so jointly. In other jurisdictions such as the Northern Territory, Western Australia (**WA**) and British Colombia there are separate and fractured approval process. The Queensland approach is more efficient as there is one process rather than many, which is particularly important where there are overlaps between the relevant statutory criteria.

Furthermore, in WA, while any person can object to an application for a mining tenure, including a mining lease application, on referral to the Wardens Court, the Warden has the discretion to refuse to hear the objection or to limit the scope of the objection. In the interests of procedural fairness, there should be no discretion to refuse to hear an objection to an application or to limit the scope of an objection. In matters of this nature, questions of fact are better address by evidence and the issues for hearing are often refined as part of the process, for example the court managed expert evidence process rather than requiring the merits of an objection to be established upfront.

Other key criticisms of other jurisdictions include:

- In NSW, the right to object to mining lease application is constrained to landholders and other tenement holders. Constraining the persons who can object to a mining lease application is inconsistent in the context of minerals being a public resource.
- In NSW, third party class 1 merits appeals to the NSW Land and Environment Court (**LEC**) have for the most part been extinguished because of:
    (a) a trigger inserted into the *Environmental Planning and Assessment Act 1979* (NSW) for state significant development, which automatically refers a matter to the NSW Independent Planning Commission (**IPC**) to hear and determine the application as the consent authority if a project receives over 50 public submissions on the application; and
    (b) otherwise, a power held by the Minister for Planning to delegate its powers as the consent authority to the IPC to hold a public hearing and determine the application.

- The EDO NSW Report on Merits Review highlights the importance of merits review (**attachment A**) and Briefing Note on improving the NSW Independent Planning Commission Public Hearing (**attachment B**) highlights the significant issues and

deficiencies with the IPC public hearing process. In summary, the current IPC public hearing process:

(a) lacks public involvement which has resulted in poorer environmental outcomes;
(b) is essentially a public meeting, which has removed the important role of the NSW LEC and the formal independent expert evidence process whereby evidence is given under oath or affirmation and can be rigorously tested through cross-examination;
(c) has no opportunity for community members to put questions to the Applicant and often due to time constraints a person only has the opportunity to speak for 10 minutes to air their concerns at the public hearing and a short window of time to make a make a written submission;
(d) has in practice, been routinely abused by Applicant's, who have put new material before the Commission after the public hearing and sometimes after the written submission period closes. This material is often highly technical in nature for example, on numerous occasions, Applicants have submitted climate change and market substitution legal and factual submissions that are hundreds of pages in length which only became available to the public during or after the public hearing;
(e) has not necessarily reduced the number of appeals by way of judicial review to NSW LEC and the decision timeframes often exceed the Queensland merits review timeframe guidelines;
(f) lacks transparency and accountability; and
(g) disregards the legal principles of natural justice and procedural fairness;

- As such, the NSW class 1 merits review in the LEC which is analogous to planning appeals in the Queensland Planning and Environment Court should be preferred over the IPC public hearing model which does allow for meaningful public participation in the process.

Conclusion

EDO's primary position is that the current objection hearing process must be maintained. EDO agrees that there are, however, opportunities to improve coherency and efficiency in the process for the benefit of all stakeholders, as outlined above.

Of paramount importance is the improvement of access to the process for First Nations peoples who have been historically underrepresented despite being most likely to be impacted by projects.

Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.