HIGH COURT OF AUSTRALIA

Barwick C.J., Gibbs, Stephen, Jacobs and Murphy JJ.

SINCLAIR v. MARYBOROUGH MINING WARDEN
(1975) 132 CLR 473
28 May 1975

Mining and Minerals

Mining and Minerals—Mining lease—Hearing of application and objections—Duties of mining warden—Duty to recommend to Minister rejection of application if of opinion that public interest would be prejudicially affected by grant—Application for lease of 1100 acres—Evidence that minerals existed under only sixty acres of area covered by application—Whether views of a section of the public capable of showing prejudice to public interest—Whether apart from objections compliance with formalities of application entitles grant of recommendation—Mining Regulations of 1971 (Q.), reg. 39 (2) (a). * Regulation 39 (2) (a) of the Mining Regulations of 1971 (Q.) provides that "if the Warden is of opinion that the public interest or right be prejudicially affected by the granting of an application for a mining lease, he shall . . . recommend to the Minister that such application be rejected."*

Decisions

May 28.
The following written judgments were delivered:-
BARWICK C.J. On 20th December 1972, the second respondent lodged with the warden for the mining district of Maryborough three applications for mining leases, in each case of an area of 320 acres of Crown land on Fraser Island for the purpose of winning rutile, zircon, ilmenite, monazite, magnetite and leucoxene. On the same date, the second respondent lodged a fourth application for a mining lease of 200 acres of Crown land on Fraser Island for the same purpose. Two of these parcels of land, each rectangular in shape, were contiguous throughout their greater length. Each of the other areas, also rectangular in shape, abutted on one of the other two areas for a very short distance of its boundary. (at p476)

2. To each of these applications the appellant lodged an objection as he was entitled to do under reg. 40 of the Mining Regulations made pursuant to s. 106 (2) (iii) of the Mining Act, 1968 (Q.) (the Act). On 29th May the second respondent lodged with the same warden an application for a mining lease of 151 acres of Crown land in the Parish of Talboor for the purpose of road access from a mining lease SML. 84 to the jetty and mine materials holding area. This was an application under s. 21 (1) (b). The applicant lodged an objection to this application on the same grounds as his earlier objections. Those grounds were as follows:

"(a) Until it can be shown that it is in the public interest to

grant a mineral lease over the area, no such lease should be recommended.
(b) The area over which the leases are sought is aesthetically attractive and should be preserved in its natural state.
(c) A comprehensive survey of the whole of Fraser Island is required to determine the best use in the long term of all of the natural resources of the Island and until such a survey has been carried out no further sandmining leases should be granted on the island.
(d) Sandmining in this area would be generally against the public interest." (at p476)

3. The mining warden issued a certificate to the second respondent pursuant to reg. 37 of the Mining Regulations and in the form no. 11 prescribed by the 2nd sch. to such regulations. By that form, when posted in accordance with reg. 38, the public were informed of the applications, and that objections to each application should be lodged at the warden's office at a stated time, and that the applications and objections thereagainst would be heard in the warden's court, at Maryborough, on a specified date. (at p476)

4. The hearing before the warden took a somewhat unusual course. The second respondent as applicant did not offer any evidence in chief in support of the applications. Indeed, its legal representative withdrew during the time the objectors tendered evidence in support of the objection, returning to proffer two statements by witnesses at the conclusion of the evidence given on behalf of the objectors. It clearly appeared from one of those statements that testing on behalf of the second respondent for the presence of minerals in the area for which mining leases were sought had shown that mineralization extended only to an area of sixty acres. The location of that sixty acres, as marked on an exhibited plan, was principally in one of the areas of 320 acres given the no. 133, though those acres extended for what would appear to be about twenty acres or less into the contiguous area known as number 132. There was thus no evidence of the existence of any mineral in the third area of 320 acres known as no. 131, or in the area of 200 acres known as no. 134. No evidence was given to support the view that in order to mine the sixty acres as identified on the plan any greater area than sixty acres was necessary. It could be said that the evidence established that there were no minerals in any part of the areas for which mining leases were sought except the said area of sixty acres. The other statement lodged on behalf of the second respondent related to the possibilities of restoration of the terrain after mining had been completed. (at p477)

5. The appellant objected both on his own behalf and on behalf of the Fraser Island Defence Organization. The evidence given in support of the objection was very extensive, given by persons who appeared to be well-qualified in respect to the opinions they expressed, and was directed to the damage to the environment likely to be done by mining, to the irreversible nature of that damage and to the desirability of maintaining the terrain and its vegetative cover in its virgin state. It is no concern of mine to dilate upon the detailed nature or the acceptability of this evidence. Suffice it to say that, quite obviously, it was directed to the public interest in the conservation of the area. (at p477)

6. The warden gave his decision on 18th June 1974. It is convenient to set it out in full:

"There are two objections. One by Mr. J. Sinclair relates to the five applications and the other by the Director of Posts and Telegraphs, Queensland, relates to applications 131, 132 and 133.
Regulation 39 (2) of the Mining Regulations of 1971 makes it mandatory for the warden to recommend the rejection of an application if it is his opinion that the public interest or right will be prejudicially affected by the granting of the application. It seems the regulation is intended for use before an application

proceeds, however, it signifies the point that public interest and right are a predominant consideration. Clearly from the evidence and material presented to the Court, Mr. Sinclair is representing the views of a section of the public and I am unable to conclude from this evidence that the interests of the public as a whole would be prejudicially affected by the granting of the leases.
I consider that until it can be shown to be against the public interest as a whole the applicant is entitled to a recommendation from me that the leases be granted. Nevertheless, the evidence which was unanswered by the applicant presented a strong case for care in the use to which land in the area is put.
There was evidence before the court of a survey by an interdepartmental committee (Survey of Fraser Island and Round Hill - 1971) but no information of what this survey established.
Certificates of application were issued in accordance with reg. 37 (1) and, in my opinion, the applications are in order.
I recommend the applications be granted subject to the interests of the Department of Forestry and the Director, Posts and Telegraphs, Queensland, being protected." (at p478)

7. The appellant, having been an objector before the warden, had a right to have the hearing of the application conducted, and the warden consider the application and the objections and make his recommendation, according to law. If the application has not been so heard and determined, he is a proper party to seek a mandamus to compel the hearing to be had according to law: Reg. v. Bowman (1898) 1 QB 663, at p 666 and Reg. v. Cotham (1898) 1 QB 802 . (at p478)

8. The appellant applied to the Supreme Court of Queensland for a writ of mandamus directed to the warden to hear the applications and the objections according to law. The Supreme Court refused the writ, being of opinion that the warden had not "so failed to perform the duty entrusted to him as to require the issue of the prerogative writ of mandamus to compel him to perform it". The Court rejected the appellant's submission that the warden had misconceived and failed to perform his task. (at p478)

9. The appellant has submitted to this Court that the warden had not done what the Act required of him. It was said that he had concluded that all that the statute required of him, apart from any objections which were lodged, was to ensure that the formalities of an application had been complied with. Further, it was said that the warden had considered that the applicant had no need to make out a case for the grant of a mining lease as, for example, by establishing the presence of minerals in each of the areas applied for. The appellant further submitted that the mining warden had failed to form the opinion that the public interest or right would be prejudicially affected by the granting of the applications for mining leases, because he erroneously thought that the public interest as a whole was not affected but only the interests of the persons on whose behalf the appellant was objecting. It was lastly submitted that the mining warden was in error in concluding that, if he did not form the opinion that the public interest or right would be prejudicially affected by the granting of the applications, the second respondent was entitled to a recommendation that the applications be granted. (at p478)

10. It is settled law that if the person having a duty to hear and consider misconceives what is his relevant duty, he will have failed to perform that duty and may be compelled by mandamus to perform it according to law. The question in this case is whether the appellant succeeds in making out the proposition that the warden failed to perceive his duty under the Act or misconceived it. (at p478)

11. It cannot be doubted, in my opinion, that the matters raised and evidenced by the objector were matters of

general public interest. The mining warden apparently did not consider them so to be because of the limited group which constituted the Fraser Island Defence Organization. I have set out the full text of the warden's decision and I am unable to read it in any other sense than that the mining warden thought that, because the appellant was representing the views of a section of the public, he, the warden, was unable to conclude that the interests of the public generally would be prejudicially affected by the granting of the leases. It is not the case, in my view, that the mining warden, applying his mind properly to the question he had to consider, concluded that the interests of the public generally would not be affected by the granting of the leases. It seems to me that his reasons disclose that he did not properly understand the matter he was bound to consider and that, in truth, he did not consider it. (at p479)

12. In my opinion, the function of the warden under the Act is much greater than the mere oversight of the formalities of the application. It is quite true that, if the application is irregular, he may recommend that for that reason the application be rejected (reg. 39 (1)): but if the application is not irregular he is bound to consider whether he should recommend the acceptance or rejection of the application. If he forms the opinion that the public interest or right would be prejudicially affected by the granting of the application, he is bound to recommend the rejection of the application (reg. 39 (2) (a)). But his function does not, in my opinion, end there. Although he does not form the opinion that the public interest or right will be prejudicially affected by the granting of the application, so that he is not bound for that reason to recommend the rejection of the application, he none the less remains bound to consider whether he should recommend the acceptance or rejection of the application. Thus, whether or not there are any objections, where the warden does not become bound to recommend rejection of the application, mere compliance with the formalities by the applicant will not entitle the applicant to a recommendation that the application be accepted. The warden must be satisfied by more than the mere compliance with formalities of the application that the matter is one proper for recommendation of acceptance. The case of the areas numbered 131 and 134 illustrate the need for material to be before the warden upon which he may properly recommend an acceptance of the application, again assuming that he is not bound by the reason of the terms of reg. 39 (2) (a) to recommend rejection of the application. In the case of these two areas, there was no evidence of mineralization being present in any part of them: nor was there any evidence to suggest that a mining lease of them, presumably under s. 21 (1) (b), was necessary or desirable in connexion with the carrying on of mining operations on any other area. There was, in my opinion, no material whatever upon which the warden could recommend the acceptance of applications in respect of these two areas. (at p480)

13. The same considerations apply to areas 132 and 133. Whilst it is true that under s. 24 of the Act the area which may be leased is not to exceed 320 acres, there must be material before the warden to justify a recommendation of acceptance of an application for such an area. To be told that, of an area of 320 acres, considerably less than sixty acres is mineralized, can in itself form no basis for a recommendation that a mining lease be granted for 320 acres. (at p480)

14. I may say in passing that no point is taken in this case as to the propriety, having regard to the provisions of s. 24 of the Act, of the grant to the same person of two areas each of 320 acres contiguous to each other, so that together they form a total block of 640 acres. Consequently, I say nothing as to the validity of such a course. But it is sufficient for my present purposes that the applicant provided no material whatever upon which a recommendation of acceptance of an application for a lease of 320 acres could properly be made. It seems to me, therefore, that the warden could not have properly conceived his duty when he said that he considered "that until it can be shown to be against the public interest as a whole the applicant is entitled to a recommendation from me that the leases be granted". In my opinion, the appellant's submission that in this respect the warden misconceived his duty is made out. (at p480)

15. But the matter does not end there. (at p480)

16. The use by the warden of the expression "public interest as a whole" indicates to my mind that the warden failed to understand that irrespective of the interests of the objectors or their number and, indeed, irrespective of the existence of an objection on that ground, he was bound to consider whether the granting of

the application would prejudicially affect the public interest. If he had realized this he could not, in my opinion, have drawn the irrelevant distinction between the views of a section of the public and the public interest as a whole. In my opinion, he has not considered the real question which it was his duty to consider, namely, whether the granting of the application would prejudicially affect the public interest. I might add that I see no reason why any public interest should not satisfy the provisions of reg. 39 (2) (a). The use of the words "any public interest" in reg. 39 (3) does not intend any differentiation in that sub-regulation from what is spoken of in sub-reg. (2) (a). The interest, of course, must be the interest of the public and not mere individual interest which does not involve a public interest. Clearly enough, the material evidenced by the appellant did relate to a public interest not limited to the interests of a less than significant section of the public. (at p480)

17. It is to my mind very important that the hearing of an application and of objections thereto by a mining warden takes place according to law. The purpose of notifying the making of the applications, indicating the time for objections and of the date of hearing, is to afford the applicant on the one hand an opportunity to justify in a public hearing the granting of a mining lease, both in point of area and in point of term, and also to give the public an opportunity of opposition supported by evidence to the grant of a mining lease. I cannot accept the proposition that the hearing of the application and of the objections is a mere formality: nor can I accept the submission made on behalf of the respondent company that the warden cannot be expected to examine in depth matters which would justify a recommendation that the application be refused or which would justify the acceptance of objections raised to the grant of the mining lease. The mining warden's recommendation, whether favourable or unfavourable, is a prerequisite to the grant of a mining lease. Whilst it is clear that the Minister may reject the warden's recommendation, it is also equally clear that a mining lease may not be granted unless there has been a recommendation, either favourable or unfavourable, of a mining warden. This emphasizes the place in the scheme of the grant of mining leases which is occupied by the hearing by the warden of the application and objections. Leasing Crown land for a term of up to twenty-one years with such rights of renewal as are contained in s. 25 of the Act is no light matter. It is plain from the provisions of reg. 39 (2) and (3) that the absence of prejudice to the public interest or right is a paramount consideration in the process of determining whether a mining lease should or should not be granted. (at p481)

18. I would therefore allow the appeal and grant a writ of mandamus to the warden requiring him to hear the applications and the objections according to law on two grounds: first, that the warden failed to appreciate that, in order to warrant a recommendation of acceptance of the applications, it was not enough that the formalities for application had been observed. It was essential that there be material before him, quite apart from any objection, which would warrant an affirmative conclusion on the substance of the applications that the recommendations should be made. This, at the least, required that he be satisfied that the areas applied for held mineral, and that no greater area was recommended than was reasonably necessary for the efficient extraction of the mineral of whose presence there was evidence. By so saying, I am not meaning to imply that evidence as to the presence of mineral will be enough in all cases to warrant a recommendation of acceptance of an application for a mining lease, but at least so much must be evidenced. It was not so in this case: it follows that the mining warden must have failed to understand what his duty was. The second ground is that the mining warden, in confusing the identity and interest of the objectors with the nature and extent of the objection, was led into thinking that the limited interest of the objectors rendered it impossible for him to conclude that any interests of the public would be prejudicially affected by the grant of a mining lease. (at p482)

GIBBS J. I am in agreement that a writ of mandamus should be granted, but in deference to the judges of the Supreme Court who have taken a different view I would state briefly, in my own words, my reasons for reaching that conclusion. (at p482)

2. In my judgment it follows inevitably from the words of reg. 41 of the Mining Regulations of 1971 (Q.), that the warden has a two-fold duty, to hear the application together with any objection thereto, and to forward to the Minister the application, any objections, the evidence and his recommendation. If the warden is of the opinion that the public interest or right will be prejudicially affected by the granting of an

application he must recommend that the application be rejected - that appears from reg. 39 (2) (a). However, if he is not of that opinion he may still recommend that the application be rejected. It is of course entirely a matter for the warden to determine what weight should be attached to the various considerations in favour of and against the granting of an application and to decide for himself whether his recommendation will be that the application should be granted or that it should be rejected. However, in deciding what recommendation to make he must consider all the objections, whether or not they relate to the public interest. If the objections do concern the public interest he must consider them even if he is not of the opinion that the public interest will be prejudicially affected by the granting of the application. For example, a warden may recommend against an application, not because he has formed the opinion that the public interest will be prejudicially affected but because he considers that the public interest might be prejudicially affected and that in all the circumstances of the case the application should not be granted until it is possible to say whether the effect of granting it will be prejudicial or not. (at p482)

3. In the course of the reasons given by the warden the following passage appears:

"Clearly from the evidence and material presented to the court, Mr. Sinclair is representing the views of a section of the public and I am unable to conclude from this evidence that the interests of the public as a whole would be prejudicially affected by the granting of the leases.
I consider that until it can be shown to be against the public interest as a whole the applicant is entitled to a recommendation from me that the leases be granted. Nevertheless, the evidence which was unanswered by the applicant presented a strong case for care in the use to which land in the area is put."

It appears from the choice of the word "and" and from the contrast drawn between "a section of the public" and "the interests of the public as a whole" in the first sentence, that the warden considered that because Mr. Sinclair was representing the views of a section of the public therefore it could not be concluded that the interests of the general public would be prejudicially affected by the granting of the leases. To argue in that way was of course fallacious. The second sentence shows a clear misconception of the warden's legal duty. In his remarks the warden was, I consider with respect, laying down the mistaken principle that if he was not satisfied that the public interest would be prejudicially affected by the granting of the applications, he was bound to recommend that they be granted. The applicant was not necessarily entitled to a favourable recommendation if the warden was not satisfied that the applications were contrary to the public interest. There were other matters to be considered, for example the objection that no further leases should be granted until a comprehensive survey of the whole of Fraser Island had been made, and the evidence that on two of the areas over which leases were sought there was no mineral, or at least no mineral that could be economically mined. The final sentence in the passage quoted reinforces the view that the warden considered that the only matter (apart from a failure to comply with formalities) that would warrant a recommendation that the applications be rejected was proof that the grant of the applications would be prejudicial to the public interest. (at p483)

4. In my judgment it appears from these reasons that in making his recommendation the warden was labouring under a misconception as to his duty, so that he did not apply himself to all the matters that the regulations required him to consider. There was thus a purported but not a real exercise of his functions and he has failed to perform his duty according to law. (at p483)

5. In conclusion I would, with respect, adopt what was said by Lucas J. in the Supreme Court, that the courts are not concerned with the question of the desirability of permitting sand mining to take place or with the question whether the recommendation of a warden is right or wrong, provided that he has performed the duty cast on him by the law. In the present case the warden failed to perform his duty and should therefore now be directed to proceed with the hearing in accordance with the provisions of the regulations. (at p483)

6. I would allow the appeal. (at p483)

STEPHEN J. The facts of this matter and how it comes before us sufficiently appear from the judgment of the Chief Justice which I have had the advantage of reading. (at p483)

2. When the hearing by the mining warden of the respondent's application for mining leases began the warden had before him applications, valid in form, for the grant of mining leases to the respondent, each of which revealed no more than the name of the applicant, the area and term applied for, the date of marking out and the minerals sought to be won. There were also before him particularised objections to each of these applications. The respondent's solicitor tendered a declaration as to due compliance with formalities and thereupon withdrew from the proceedings for the time being, having announced that when the objector's case was concluded he would call evidence on behalf of the respondent. There then ensued lengthy evidence by a number of witnesses called on behalf of the appellant in support of his objections, evidence which the respondent had chosen not to challenge and which the warden described in the course of his decision as evidence which, being "unanswered by the applicant presented a strong case for care in the use to which the land in this area is put". It included expert evidence of ecological jeopardy threatened by sand mining, of the unique character of Fraser Island, its very special potential as a national park and wilderness area, the economic value of its use for those purposes and the unfavourable economic aspects involved in sand mining on the Island. (at p484)

3. Only two witnesses were then called by the respondent, of these the first did little more than state that of the total of almost two square miles comprised in the four leases applied for, only one area of some sixty acres, confined to only two of the proposed lease areas, was known to contain mineralization such as to make it economic to mine. The respondent's second witness dealt, quite briefly, with some few aspects only of the matters with which the appellant's witnesses had dealt. (at p484)

4. This was, then, the state of the evidence before the warden. A duty imposed upon him by the regulations in hearing the applications and objections was to recommend to the Minister that an application be refused if he was of opinion that the public interest or right would be prejudicially affected by the granting of the application. In the event the warden's decision was to recommend the grant of the leases applied for. How then did the warden come to this decision? To ask this question is not to canvass the correctness of his decision but rather to seek an understanding of the warden's approach to his function in conducting the hearing and in making his recommendation. (at p484)

5. But first let me state what I consider to be the task involved in hearing an application for the grant of a mining lease and any objections to it, particularly in the light of the terms of reg. 39 (2) (a) which reads:

"(2) (a) If the warden is of opinion that the public interest or
right will be prejudically affected by the granting of an application
for a mining lease, he shall, whether a certificate of application
has been issued or not, recommend to the Minister that such
application be rejected.' (at p485)

6. Any consideration of the public interest for the purposes of reg. 39 (2) (a) should, I think, involve the weighing of benefits and detriments. In this task a warden will not be required to pursue his own inquiries; he may confine himself to the material placed before him by the parties. Whether or not he may in addition have recourse to his own knowledge of relevant matters, gained perhaps in his capacity as a mining warden, need not now be resolved; there is in this case nothing to suggest that the warden did in this case rely on any such knowledge. (at p485)

7. In some special contexts questions of the public interest may not involve this process of weighing against each other conflicting merits and demerits; where however the concept of the public interest occurs as a factor in the grant or refusal by the Crown of a mining lease it can, I think, have only this meaning. (at p485)

8. The way in which the warden expressed his decision makes it clear to my mind that he did not conceive of his function as involving any such process and the conclusion at which he arrived demonstrates, in the light of the evidence which was before him, that this was so. That evidence consisted in very large measure of testimony by the appellant's witnesses and exhibits tendered through them, all going to the issue of public interest and all directed to showing that to grant the leases, at least at this stage, would be contrary to public interest. Without in any way trespassing upon the warden's function of determining for himself the weight to be attached to this unchallenged and largely unanswered evidence it is proper to note at least that it was relevant to the issue to which it was directed and that it did not depend upon issues of credibility in the ordinary sense of that word. What is more, as I have already said, the warden himself described it, or some of it, as unanswered and as presenting in at least one respect a strong case. Even had there been evidence of worthwhile mineralization within each of the lease areas it is perhaps difficult in these circumstances to see how any proper approach to the question of public interest could lead to a recommendation favourable to the respondent. When viewed in the light of the evidence of the respondent's own witness that two of the leases sought contained within them no areas of worthwhile mineralization it is apparent that in some way the warden's task has miscarried; for if the evidence be that to mine these two lease areas is not economic there can at least in their case be little, if anything, to weigh in the scales against the evidence of detriment furnished by the appellant. (at p485)

9. The warden's actual approach to the question of the public interest sufficiently appears in his decision and involves, I think, two errors. The first lies in his statement that "Until it can be shown to be against the public interest as a whole the applicant is entitled to a recommendation from me that the leases be granted". In my view no such prima facie entitlement exists which an objector is obliged to displace before his objection may succeed; instead it will in every case be for the warden to form an opinion upon this question of the public interest having regard to the evidence before him and perhaps also to any special knowledge he may possess as a mining warden. If adverse to the applicant, that opinion must result in a recommendation that the application be refused. (at p486)

10. The second error emerges from what I understand the warden to say concerning the appellant's incapacity to represent the public as a whole. (at p486)

11. Because Mr. Sinclair, the appellant, represented only the views of a section of the public the warden appears to have felt himself unable to treat the evidence tendered on his behalf as leading to the view that the interests of the public as a whole would be prejudicially affected by the granting of the leases. The concluding sentence of the second paragraph of the warden's decision does, I think, clearly enough show this to have been his understanding; this is borne out by the first sentence of the succeeding paragraph. The question for the warden was not, however, to discover what were the views of the public as a whole or of those who may properly represent the public as a whole; he had but to form an opinion concerning the existence of prejudice to "the public interest or right" and this he precluded himself from doing by the erroneous view he took of his function. (at p486)

12. In these circumstances it may properly be said that the hearing by the warden so miscarried that no effective recommendation as contemplated by the legislation was made to the Minister, it being vitiated by the warden's misconception of his task. This is therefore a proper case for mandamus to go. I would allow the appeal. (at p486)

JACOBS J. There is sufficient indication in the language used by the mining warden that he mistook the question which fell to be determined by him in making his recommendation to the Minister. The making of a recommendation to the Minister whether or not the leases should be granted was a statutory duty which was

required to be performed by the warden in terms of reg. 41 (1) of the Mining Regulations and if it appears that he mistook his statutory duty then mandamus will lie to require him to perform that duty according to law. I doubt how far it is useful in such a case to refer to his function as judicial or quasi-judicial, though similar principles apply, as a general rule, as in the case of the exercise of a judicial or quasijudicial function. (at p486)

2. The duty of the warden was to examine the applications for mining leases in order to see that in form they fulfilled the requirements of the Mining Act and the regulations. It was also necessary for him to consider whether in all the circumstances the public interest or right would be prejudicially affected if they should be granted. If he formed the opinion that it would be so affected it was his duty to recommend that the applications for mining leases should be rejected. The public interest is an indivisible concept. The interest of a section of the public is a public interest but the smallness of the section may affect the quantity or weight of the public interest so that it is outweighed by the public interest in having the mining operation proceed. It does not however affect the quality of that interest. The warden looked for what he described as the public interest as a whole and he did so in contradistinction to the interest of a section of the public. Moreover, he limited the area of public interest to the section of the public who propounded the views expressed by the objector. This was not permissible. The views may have been propounded by a section of the public but the matters raised went to the question of the interest of the public as a whole. The warden appears not to have given weight to the fact that the evidence produced by the objectors should be regarded as evidence on the public interest generally and needed to be weighed in all the circumstances of the public interest whether or not the evidence and the views therein were put forward by a large or a small section of the public. (at p487)

3. On an inquiry of the kind which the warden is required to make it is not possible to describe any onus of proof of a public interest against the grant of a mining lease. Nevertheless, generally speaking, there appears to me to be disclosed by the Act an intention that the grant of mining leases should be recommended unless the grant would be against the public interest. The grant is not dependent on the existence of minerals in the area granted but the proved existence of such minerals and the proved or expected quantity thereof are factors to be considered in determining where the public interest lies, and conversely the absence of such minerals must be weighed against the amount of damage to the environment which mining of the area will produce. The words "public interest" are so wide that they comprehend the whole field of objection other than objection founded on deficiencies in the application and in the required marking out of the land applied for. For instance the public interest may tell against the grant of a mining lease even though the particular interests of an individual are the only interests primarily affected. It may thus be in the public interest that the interests of that individual be not overborne. However, all the objections can be and should be related to the public interest. But private interests as such are not a relevant consideration. So far as they are intended to be protected, they are specifically so protected in the Act itself. See, for example, s. 14 and s. 114. (at p487)

4. I agree that the appeal should be allowed and that mandamus should go. (at p488)

MURPHY J. I agree with the judgment of the Chief Justice. (at p488)

Orders

Appeal allowed.

Order of the Supreme Court of Queensland set aside, and in lieu thereof order that a writ of mandamus be directed to the first-named respondent requiring him to hear and consider the applications by Queensland Titanium Mines Pty. Ltd., for mineral leases nos. 131, 132, 133, 134 and 136 on Fraser Island and the

objections of the appellant thereagainst according to law. Appellant's costs in the proceedings in this Court and in the Supreme Court to be paid by the second-named respondent.