

## WHAT HAPPENED AT YESSABAH.

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History recalls that the formative years at Kempsey were pioneered by a logging industry based on giant cedar trees. The wood from these trees was exported to England where forests had already been depleted for construction of ships to support colonial interests. Victorian governments had some regard to resource protection and logging bans to preserve Kempsey Cedar were applied from distant Sydney. Cedar smuggling provided employment opportunities to sawyers of the incredible wage of 5 pounds per week and as a result by 1845 Kempsey cedar no longer existed.

During these same years the Yessabah Hill 15 kilometres west of Kempsey was designated a reserve because of its outstanding caves, rainforests and fossils. Over the years the national heritage values of the hill were gradually forgotten and a mine, started in the 1930s grew to a size where by 1980 a number of caves had been destroyed. Mining plans drawn in the 1960s reveal an intent to remove Yessabah Hill completely. Except for a series of major errors on the part of the mining company and a gathering environmental awareness by the public, those plans would have demolished the Hill.

In 1982 David Mitchell Melcann purchased the Yessabah mine from Australian Portland Cement. This would be of passing interest in the farcical play that follows, except that this event was to become of key importance to the bearing of the Yessabah Court proceedings. When the new owners of the mine assumed control their first action was to replace the four local workers on the mine with men of their own. The manager of the mine occupied a house near the mine site and he was given two weeks prior to Christmas to move to another premises. A tragic story in the true Hinch tradition but also catastrophic for David Mitchell Melcann, in terms of local public support. Other significance of the ownership transfer was only realised much later.

In 1983 DMM failed to renew their lease before the old lease lapsed and this meant that they would have to reapply. This was no doubt regarded by their management as an annoying technicality that would be dealt with in the fullness of time. However, an unexpected problem arose. National Parks and Wildlife lodged an objection to the new lease preventing the granting of a new lease. This objection was to stand for six years before it was realised by the speleological community that there was no lease, and that mining at Yessabah could be legally challenged.

The operation of the mine over the intervening six years had been given a certain legitimacy when the Department of Minerals and Energy issued a mining licence. This licence permitted for the removal of material from stockpiles, loose rocks and boulders that had been mined prior to the expiry of the valid mining licence.

It was the removal of these "stray boulders" that led the Kempsey Speleological Society to believe that more caves were facing destruction. KSS wrote to the ASF with underwhelming response. SUSS members were advised of the situation and exploratory visits to Yessabah revealed an area of rare beauty of exceptional value. We learned of the inadequate legal documents supporting the operation and intended to explore Court proceedings but we also approached the problem by developing a publicity campaign which was successful in unexpected ways.

Derryn Hinch is a tabloid TV journalist with a sympathy towards environmental issues and an audience of more than a million people. We escorted a Hinch news crew to the site and provided them with a preresearched story and some excellent footage of sweet furry bats. When the 10 second promotional clips for the story went to air, the Hinch office was immediately contacted by David Mitchell Melcann and warned that DMM was not mining at Yessabah but instead were removing loose tailings under the perfectly legal mining licence that had been issued by the Department of Minerals and Energy. They warned that if the segment went to air they would take legal action. Hinch used the Unisearch service at the University of New South Wales to locate and hire a mining engineer, Dr Gour Sen. He was flown to Yessabah to perform scientific tests and confirm whether DMM were mining or not. On camera Dr Sen was shown applying a chemical analysis to date the age of exposed rock. He was asked "Are you absolutely sure that they have been mining here recently ?" and he answered yes.

Bob Carr leader of the opposition asked questions in the Parliament about whether the mine at Yessabah was operating illegally. At the same time Hinch went to air charging the mining company with "raping, pillaging and plundering".

Shortly afterwards the Chief of Staff of the Department of Minerals and Energy, Mr Ken Hollands telephoned Dr Gour Sen. What was said we shall never know except that the conversation severely frightened Mr Sen. When questioned later by the Hinch reporter Chris Smith, Dr Sen changed his earlier claims and denied he had made any assertions about whether there was mining at Yessabah and also claimed that the Hinch Program had misquoted him. Dr Sen was to say later, to the Environmental Defenders Office that "he must extricate himself from this matter at all costs". In response to the Parliamentary questions the Department of Minerals and Energy representatives payed a "surprise" visit to the mine site. After thoroughly examining the site these representatives declared that there was no evidence of mining and the allegations were groundless.

Mr Andy Spate had been attempting to negotiate for National Parks and Wildlife Service over the issues relating to the mine. At the January ASF conference, Mr Spate encouraged SUSS committee members to proceed with legal action in an attempt to promote a "meaningful dialogue".

I applied for legal aid through the government agency, the Environmental Defender Office and with the support of their solicitors this application was successful. The case could be heard in the Land and Environment Court where we would claim that David Mitchell Melcann were contravening zoning regulations. Yessabah is not zoned for mining and the mine could not normally operate in that area. If however a company has worked the area for many years, then that company has a right of "previous use" and they are permitted to continue business as long as there is no expansion greater than 10 percent. David Mitchell Melcann has that right at Yessabah but .....they were claiming that they had not been mining at all for the last six years ..... in which case their "previous use" rights would have lapsed.

If however, they were to admit that they have been mining, an action could be brought in the Mining Court. For an individual to appear in the Mining Court special dispensation called a fiat must be authorised by the Attorney General that gives the applicant Standing. The fiat makes provision that a case of significant public interest may be heard in front of the Mining Court. If the fiat is granted, this only allows the case to be heard in the Court and has no influence upon the outcome of the trial.

In Australia, history records very little success obtaining fiats for environmental cases. In Tasmania when standing was sought regarding the Dams issue, the Attorney General felt that there was a case to be tried of significant public interest and gave the fiat. He was subsequently sacked by the then Premier, Robin Grey who made himself Attorney General and cancelled the fiat. When the Attorney General of Queensland was asked to grant standing for Central Queensland Speleological Society in the Mt Etna issue, he remained silent. This inequity in law, is one reason why mining companies are able to flagrantly breach laws and not worry about the consequences of legal proceedings.

In addition to obtaining the permission of the Attorney General, we would need a further application to legal aid to run the case in the Mining Court. We launched both these applications with perhaps a naive faith in the justice of our case. At this time we were criticised as being fringe group greenies without the support of the overall environmental movement. Fortunately the Mt Etna experience had shown that support from as many environmental groups as possible can be invaluable and so as a matter of course we had been sending major conservation groups with bulletin sheets to keep them informed of the state of our case. We managed to orchestrate letters of support for our fiat application from these groups to the Attorney General, Mr Dowd.

While waiting for a response from Mr Dowd, we were advised that great progress was being made with a compromise plan negotiated between the National Parks and Wildlife Service, and the mining company. We were urged by all concerned to "lay off" and now we were faced with the prospect of placing our faith in the compromise plan and dropping the Standing application (probably forever), or continuing our action.

Mr Andy Spate, of National Parks and Wildlife advised us that the compromise plan limited the new lease to 5 years, extraction was going to be limited to 15,000 tons a year and the mine operation would remain in the present area of development. National Parks had applied for the Yessabah Hill to be declared a Nature Reserve but this application had been blocked by an objection by the Mining Company. National Parks were anxious to see a settlement reached so the company would lift this objection. Our actions were "rocking the boat".

Kempsey Speleological Society was reluctant to support us since it was being assured by the National Parks and Wildlife Service that their negotiations were being threatened by our disruptive influence. KSS had been shown a "restrained" mining plan (which was probably genuine) but the full implications of that plan are not clear to a casual observer.

We did not know it then, but the Attorney General, Mr Dowd was in the process of turning our application down and our fight in the Mining Court was to never take place. In retrospect, we now know our case was in serious trouble.

Around about this time Greenpeace was involved in a somewhat radical media action, blocking a covert industrial waste pipe under the ocean. Greenpeace was going to be the first group to apply a newly legislated act, Section 25 of the Environmental Offences and Penalties Act, in an action against Caltex for its undersea pollution. For reasons we may never know, that case never came to Court.

Section 25 provides Standing for an individual or group at the discretion of a government body such as the State Pollution Control Commission. Since we believed the Attorney General would be reticent about granting our fiat we thought that with an application to the SPCC for a Section 25 there might be extra pressure on the SPCC to grant the fiat by the Attorney General to relieve him of the the problem of public outcry. At worst it gave us two bites at the cherry.

By now the significance of the transfer of ownership from Australian Portland Cement to David Mitchell Melcann was realised. The mining licence which permitted tailings and loose boulder recovery did not transfer with the ownership of the lease. Not only was there no mining lease, there was no legitimate mining licence.

It was a major worry that if National Parks dropped its objection (which was likely if a negotiated settlement had been reached) then the Minister of Mines would grant a new lease and our Court case would be academic. Certainly we thought that the Minister could not legally grant a lease and the Environmental Defenders Office faxed numerous letters pointing this out. Other environmental groups also wrote to the Minister of their concern about furry bats and finally he cleared his mail box of this junk mail by declaring that no lease would be granted until after the issue was resolved in Court.

Our resolve to apply for the Section 25 was strengthened when in a meeting with representatives of David Mitchell Melcann and the Department of Minerals and Energy, we were able to view the mining plan that National Parks had endorsed in their settlement offer. This plan showed the construction of a waste disposal area ten times greater in the size of the present dump, a three - four times increase in the extraction rates rising to an annual extraction of 50,000 metric tonnes and a lowering of the quarry benches to approximately 30 - 40 meters below their present level. The plan showed the boundary of the mining lease was close to the existing damaged area but wandered, and on average lay approximately 10 meters from the present quarry wall towards the rainforest and Karst area. The top of the hill was to be removed. Even assuming that DMM had a mining lease, this plan was not permissible by law without an environmental impact statement since it represented an increase in extraction that was greater than 10 percent. This did not seem to have occurred to them. In the meeting it was indicated that the mining would be away from the western quarry walls and the caves. The waste disposal area they said, was "a miscalculation" and there was to be increased disposal area. They said there would be a re-generation plan under the advice and management of National Parks.

Bungonia is a tragic example of the value of mining lease conditions. Mining companies may clearly breach whatever conditions that their convenience dictates and without fear of legal consequences. In the meeting our group indicated that we were not satisfied with lease conditions as any a guarantee of protection. We agreed to formulate a settlement plan and the means of enforcing the plan would be determined by our lawyers. This in effect means that David Mitchell Melcann will be required to give an undertaking to the Land and Environment Court. Unlike mining lease requirements, a fiat from the Attorney General is not required to enforce them. Failure by a company to comply with the undertakings is Contempt of Court punishable by penalties including winding up the company and jail sentences for the Board of Directors.

The same morning that we were due to appear in Court, the news arrived that the SPCC had granted us a Section 25. It was unfortunate timing. David Mitchell Melcann's lawyers went to Court with the belief that "it was all over" and my barrister went with, a "Big Stick". It was a revelation that we were suddenly in a position to take out an injunction and close the mine. Perhaps they knew about the fiat application to the Attorney General and perhaps they knew that we were "fixed" in that department, but certainly the Section 25 caught them unawares. The word "treachery" was doubtlessly in the vocabulary of David Mitchell's lawyers that afternoon and the immediate response of the company was to deny all access by our experts to the mine site.

This made the development of a mining settlement much more difficult since it was necessary for our experts to examine the site. A hurried letter of apology was dispatched, explaining the sudden arrival of the Section 25 on the morning of the Court hearing. The letter reassured them that we still very much wanted a meaningful dialogue. Settlement could not be reached without access to the mine site. Naturally, until a settlement was consummated it would be naive to terminate legal proceedings. We certainly were sincere about designing a solution by which a mine might be tolerated on the site and it was with reserved suspicion that permission was granted to inspect and we took the opportunity to gather as much information as we could.

It should be possible, we thought, to remove limestone from sections of the hill such that there is minimal visual impact and no further intrusions on cavities and meso-caverns. Les Hall, bat expert flew from Brisbane to see the main Bat Cave. He was apparently highly impressed and commented that the site was of much more importance than had been realised. Armstrong Osborne noted that the caves were likely to form an interconnected system and that intrusions from the mine could alter the climates of the caves and this might change the temperatures within the caves and result in serious disturbances to the habitat of the bats. There was also a danger of breaching the water table.

SUSS trips to Yessabah were organised to explore and survey the significant caves in the area. We began documenting the trend, development and interrelationships of the caves and surveyed as many of the major caves on the pinnacle karst as the time permitted. We then linked these surveys together with an overland traverse which included a line of karst features crossing farming property on the hillside opposite to the western side of Yessabah hill. These features included a number of small cave entrances that had been blocked and one significant doline previously used as a garbage dump. The doline was found to contain two 5000 gallon water tanks, the remains of an FJ Holden, and an assortment of refuse from the 60's and 70's.

The Kempsey Speleological Society have already mapped 92 caves on Yessabah Hill and our efforts raised the entrance tag numbers up to the century. Our survey efforts show that their work has been accurately and thoroughly executed and with some squeezing added some extensions to the previous maps. Although our survey efforts are duplicating much of their work, our efforts are not wasted since the raw data we obtain is to be stored on the Geodesy database, capable of three dimensional graphics presentation and data manipulation by computer.

As Armstrong suggested, interconnection of the caves is a strong characteristic at Yessabah, with different formation characteristics in close proximity to one another. In some cases several caves may form within metres of one another under completely different influences and developing characteristics attributable to those influences.

Joints within the limestone of the Pinnacles area contribute to the vertical shafts and impressive pinnacle development. The walls of these deep fissures are sculpted and dissolved by cascading rain water and descend 25 meters to the large phreatic chambers of Daylight Cave. The vertical shafts are created along joints which interconnect with horizontal vadose passages.

The abseil into Daylight cave reveals unexpected systems of skylights and connections leading to the surface sometimes even below the abseil. Daylight was found to contain millions of small fossil bones calcified into the floor of the upper levels and more significantly, the daylight areas of the cave are crowned with formations on the floor bearing many of the stromatolitic features of the craybacks seen at Jenolan and Wombeyan. These were photographed and forwarded to a group at Sydney University studying the crayback formations.

East of these shafts into Daylight, a canyon like doline marks the ancient collapse of a cave that was once the extension of Y27. Its entrance is now nestled in the southern end of the canyon with the northern end at the top of a cliff overlooking bench RL53. The cliff end of the canyon is largely filled with rectangular boulders which are possibly the remains of the collapsed roof. While there are only small caves and fissures to be found within the boulder pile, the sides of the canyon contain joint features that extend at right angles, some 20m, and merge into the vertical shafts of Daylight Cave.

On the western side of the Pinnacles area, the large surface area of the limestone cliffs collects sheets of rainwater that spill down into the pinnacled landscape of the western face, eroding the gullies, ravines and erosion pools. The major caves such as Y30 (Deep Slide Cave) dip in the opposite direction to the surface drainage on the hill and along the bedding plane in the direction of the mine. The bottom of Y30 was found to contain a small intermittent stream draining southward along the strike of the bedding plane.

A number of vertical drainage caves evidently carry large quantities of water in times of rain. In rain periods, Downpipe Cave accepts surface spillage water from several entrances in the rillenkaren pinnacles and transports water along short stream passages bedded with rounded river gravels. Solution tubes and waterfalls drop some 30m to a doline on a lower level surrounded by as yet undocumented caves and very close to the Bat Cave. In the Pinnacles area I found two downpipes containing vertical passage perfectly smoothed by downpouring water. The entrance to one of these caves starts high in the Pinnacles area and boasts a fine display of cave coral. The coral is unusually formed because of the competing influences of precipitation by strong upward airflows from the lower tube and dissolution of the coral by the capture of rainwater at the cave entrance. Both these down pipes required SRT for further investigation.

On the western cliff side, caves dip down into the hill towards the east. Their entrances have formed along the terraces that run south along the Yessabah Hill. Y27, 26, 25 with a descending trend to the exposed entrances. Terraces above and below show the same laminar layout and it appears that in general while the caves formed on each terrace are very interconnected, the interplay between their upstairs and downstairs neighbours is sparse. Downpipe caves seem to perform this during high run off periods only.

In addition to the obvious connections, examination of our surveys reveals a close proximity of False Floor Cave and Daylight Cave and also a strong possibility of connection between Downpipe and Bat Cave. One of the down pipe caves is highly likely to connect with Daylight Cave but the other is likely to drain west.

A creek bed runs south to north on the western side of Yessabah Hill. Beneath the drainpipes and Pinnacles, the western drainage is evidenced by a spring and boggy ground at the bottom of this escarpment. Many years ago a water collection lake was dug near this location and locals report that the collection lake filled as soon as it was dug, and that it has always been full. The lake expels a considerable water flow into the ponds that abut the weighstation office of the mine. Immediately above the lake is one of the more significant caves, False Floor cave and below its entrance there is a rockpile easily capable of harbouring more cavities.

Drainage can also be observed a kilometre to the south with two effluxes of considerable water volume draining into Dungay Creek. One of these springs emerges beneath the roots of a tree growing out of a doline in a limestone outcrop. The boggy plateau above Dungay Creek level is fed by springs. Southern water drainage is perhaps also indicated by the attributes of the southern most cave Y50 (Water Cave). Water Cave is home to a number of bats and has a copious bat guano collected on the floor and walls. The Water Cave entrance is approximately 4m across, with a short phreatic tunnel disappearing into rock collapse to the right of the entrance. Here the evidence of terraces melds with the ground since the sharp relief of the hill is here, nearly gone. There are cracks, solution tubes and small caverns on the limestone outcrop either side of Water Cave, but there is no obvious way of gaining access to more caves in the immediate area.

The main entrance to Water Cave rapidly descends to a short squeeze, after which descent continues along a keyhole passage finally to a small lake. The keyhole passage has a slot in the floor and the roof is scalloped. It is

the only cave at Yessabah so far found that contains a sump. I dived this sump using cave diving equipment and found that it descends to 6m where a 4m long passage on the right hand side dips to a maximum depth of 8m into an unnegotiable silt filled passage. The walls of the passage under the water are caked and ribbed with formations similar to limestone formations of flowstone and stalactites, however they are made of bat guano and decompose when touched. The passage continues but is unnegotiable by a diver.

The most striking area at Yessabah is the pinnacle karst and it is sobering to see the towering pinnacles of grey scarred by mining action and partly lost forever in empty box canyons. One minor cave descends 40 meters just inside the wall of the one of the mine benches. The internal wall of this cave on the side of the mine is cracked and fractured with a main passage that drops to join the main Daylight Cave. In one place a newly exposed entrance stands as a balcony to a 15 meter drop to a mining bench. In the distant field, cedar might once have grown but now their mighty forms are only ghosts, it is all dead and gone.

Our feelings of dismay over the presence of the mine were emphasised by the opinions of environmental groups now also involved in the issues. These were the groups that peppered the SPCC and the Attorney General with letters of support on our behalf. Their attitude to the mining is one of "zero tolerance". They perceive our negotiations as an attempt to rationalise the existence of a mine with no legal or moral right to occupy the area, and our attitude seems far too conciliatory. We have legal aid, the legal advantage, the insult of unfair cover up practices and small furry bats to care for..... the environmentalists believe we should, "lower the blade and push". If the case goes to Court, then the practices of the Department of Minerals and Energy would be layed bare to public scrutiny. This factor acts in favour of obtaining more favourable conditions in any settlement since there are many embarrassing indiscretions which some people would prefer were not explored in the gaze of the public arena.

The way we conduct business on this issue reflects on our credibility in the future. As part of an enticement to compromise, David Mitchell Melcann offered the speleological community a position on the "Interdepartmental Committee" which may represent a communication channel from ASF to the limestone mining industry. The position might be toothless however it might also discourage certain mining practices and encourage more expenditure on studies by academics grossly under utilised by industry and government. Such liaison may prevent new developments in valuable karst areas from ever beginning and perhaps with backup from ASF help to end undesirable mining works.

While it is clear that the mining industry only moves in the interests of the community when the "blade" is poised, it should be seen by the industry that we are negotiators capable of recognising the needs, interests and importance of the mining industry. There are many other important karst areas under threat from mismanagement. These will no doubt soon receive more attention from speleologists but there may not be the same series of fortuitous mistakes by our adversaries.

Perhaps for some this bribe is not worth the price of a mine on Yessabah. There is one other major factor that encourages the evil of "negotiation". My ever confident barrister frequently reminds me "litigation is never certain". At Mt Etna the mining company showed that it was prepared to expend large sums of money fighting off greenies, and in the end the money they paid for good lawyers, won their case. At Yessabah they could pay for the best legal advice and with support from a sympathetic government and local council eventually development consent might be obtained. What is won today may later be lost..... as was the case at Bungonia. There are no guarantees but a negotiated settlement more firmly fixes the protection of the area for as long as an organisation such as ASF is capable of monitoring them.

These last weeks we have prepared both for settlement and a possible Court case. The various experts that visited the site have made affidavids quantifying the importance of values relating to heritage, flora, fauna and karst. We need to prove that mining is inconsistent with these values and that there has been mining contrary to regulations. To this end the reluctant Goure Sen will be subpoenaed and his evidence under oath could become public. Tonnages removed from the mine may be deduced from the royalties paid to the Department of Minerals and Energy and from a photogramatrist's examination of aerial photographs. Since 1983 approximately 100,000 metric tonnes of material have been removed and this is confirmed by the royalty payments.

Ian cooper drafted a new mining plan designating all mining to take place only on the lower benches of the mine. It seemed that the area most likely to intersect caves was in the upper benches since here already a number of caves have been destroyed. On the existing lower benches there is no sign of more caves but there is a risk of intersecting the water table if the level of the benches goes too low. Further removal of material on the upper benches would cause such a high cliff line that the edge stability will be further degraded. In fairness, the mine planned to mine along the dip line away from the cliff face and cavernous area. It should be noted that this was not done previously and the present cliffs are about 25 metres high and unstable. They will inevitably slide into the mine benches under the influences of normal erosion with the loss of some rainforest and caves.

The main considerations of our mine plan include immediate regeneration of the top benches although there will be removal of unstable rock and an upper limit on the total extraction permitted from the mine and then only from within designated areas on the mine. At first we were unimpressed at the 21 year lease. This seemed important to the mine manager and he emphasised that this was the normal period at which mining leases are granted. After some consideration we felt that the real factor of importance was the total limestone extracted,

rather than the time over which it was taken. Once an acceptable quantity of extraction has been determined, slow extraction is less damaging since smaller blasts are used and accompanied by a smaller less frenetic mining operation.

DMM claimed that at least 700,000 metric tonnes of limestone were required to be economically feasible. Ian's new plan which confined removal to the lower benches only, provides 600,000 tonnes of limestone. This is a quantity above what they are permitted to take without performing a new Environmental Impact Statement. Over the lifetime of the lease period an EIS will be done and then the full amount will be extracted.

Crushed limestone is presently selling for \$30 a tonne which means this plan provides reserves of limestone worth 18 million dollars. Only time will show whether they will accept this plan or whether we shall run the Gauntlet.