

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 9505/14

Applicant: **COAST AND COUNTRY ASSOCIATION OF
QUEENSLAND INC**

AND

First Respondent: **MINISTER FOR ENVIRONMENT AND HERITAGE
PROTECTION**

AND

Second Respondent: **MINISTER FOR NATURAL RESOURCES AND MINES**

AND

Third Respondent: **HANCOCK COAL PTY LTD**

APPLICATION FOR A STATUTORY ORDER OF REVIEW

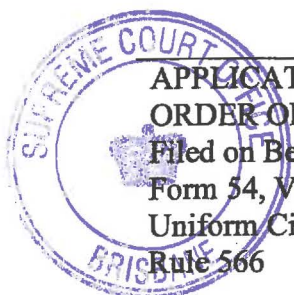
Application to review the decision of the First Respondent (**EPA Minister**) made on 29 August 2014 under section 225(1) of the *Environmental Protection Act 1994* (**EPA**) (as in force at the time of the application for an environmental authority for the Alpha Coal Mine by the Third Respondent) that the application for an environmental authority for the Alpha Coal Mine by the Third Respondent be granted subject to conditions.

AND

Application to review the decision/and or conduct for making a decision of the Second Respondent (**MRA Minister**) to grant the application for a mining lease under the *Mineral Resources Act 1989* (**MRA**) for the Alpha Coal Mine by the Third Respondent subject to conditions.

The Applicant is aggrieved by the decisions and/or conduct because -

1. The Applicant was at all material times and is an association incorporated in Queensland whose objects include the protection of the natural environment.



APPLICATION FOR A STATUTORY
ORDER OF REVIEW

Filed on Behalf of the Applicant

Form 54, Version 1

Uniform Civil Procedure Rules 1999

Rule 566

Environmental Defenders Office (Qld) Inc

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West End, Qld, 4101

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2. The Applicant made a properly made objection under section 260 of the MRA to the grant of the mining lease for the Alpha Coal Mine.
3. The Applicant made a properly made objection under section 216 of the EPA to the grant of the environmental authority (mining lease), the draft environmental authority and the conditions of the draft environmental authority for the Alpha Coal Mine.
4. The Applicant called evidence, made submissions and otherwise actively participated in the objection hearings before the Land Court held concurrently under section 268 of the MRA for the application for the mining lease and under section 220 of the EPA for the application for the environmental authority (mining lease) for the Alpha Coal Mine.
5. The Applicant had a right that the objections hearings would be heard by the Land Court and recommendations would be made by the Land Court according to law.
6. On 8 April 2014 in *Hancock Coal Pty Ltd v Kelly & Ors and Department of Environment and Heritage Protection (No. 4)* [2014] QLC 12 the Land Court:
 - (a) Recommended under section 269 of the MRA that the Third Respondent's application for a mining lease for the Alpha Coal Mine either be:
 - (i) rejected; or
 - (ii) granted, subject to the condition that the approval be subject to the Third Respondent first obtaining licences to take, use and interfere with water under paragraphs 206(1)(a) and (b) of the *Water Act 2000* such that all concerns pursuant to the precautionary principle are resolved.
 - (b) Recommending under section 222 of the EPA, as in force on 30 March 2013 prior to the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, that the Third Respondent's application for a non-code compliant environmental authority (mining lease) for a level 1 mining project for the Alpha Coal Mine either be:
 - (i) refused; or
 - (ii) granted, subject to the following additional conditions:
 - (A) that approval be subject to the Third Respondent first obtaining licences to take, use and interfere with water under paragraphs 206(1)(a) and (b) of the *Water Act 2000* such that all concerns pursuant to the precautionary principle are resolved;
 - (B) the draft environmental authority be amended by the insertion in table 15 of three additional monitoring points, one located on each of the Anderson's, Currie's and Ms Cassoni's properties, with each given the parameter of water level, with at least one reading every twelve hours by electronic data reader; and

(C) that there be a condition in the draft environmental authority to the effect that the Third Respondent enter into make-good agreements with the Curries, the Andersons, and Ms Cassoni, within either twelve months of the grant of ML 70426, or before commencement of mining activities, whichever is the sooner.

7. The Applicant has applied to the Court for a statutory order of review of the Land Court's decision as set out in the preceding paragraph (proceedings No. 4249/14).
8. The hearing of the application for a statutory order of review in proceedings No. 4249/14 is set down for hearing on 13-14 October 2014.
9. On 23 September 2014 the Applicant received notice that the EPA Minister had granted the application for an environmental authority. The reasons for the decisions stated, *inter alia*, that:

"6. The Minister responsible for the *Mineral Resources Act 1989* has assured the EPA Minister that the Minister will impose a condition upon the grant of Mining Lease 70426, requiring the applicant [Third Respondent] to apply for water licences under the *Water Act 2000*, that will give effect to the intent of the Land Court recommendation at page 2, paragraph 2(a) and (c) of the objections decision.

7. The EA [environmental authority] will be conditioned to take effect only upon the grant of ML 70426.

...

11. Having regard to the above considerations, the EPA Minister has decided that the draft EA will be granted, with the following conditions (additional to those in the draft EA):

- a. The EA will be conditioned to take effect only upon the grant of MLA 70426. MLA 70426, if granted, will require the applicant to apply for water licences under the *Water Act 2000*, which will give effect to the intent of the Land Court recommendation to both Ministers. Accordingly, an identical or substantially similar condition to that proposed in the ML 70426 will not be imposed on the EA."

10. As at the time of filing the application in these proceedings, the Applicant is uncertain if the MRA Minister has made a decision on the application for a mining lease under the MRA for the Alpha Coal Mine in the terms stated by the EPA Minister or otherwise.
11. If the Applicant is successful in proceedings No. 4249/14 the EPA Minister's decision to grant the environmental authority and the MRA Minister's decision and/or conduct for making a decision will be invalid because the procedures required by law, namely, valid recommendations being made by the Land Court as a pre-requisite for the decisions, will not have been followed.
12. The Applicant has a right that the applications for the environmental authority and the mining lease are decided according to law.

The grounds of the application are –

Lack of finality

1. The decision of the EPA Minister and the decision and/or conduct of the MRA Minister:

- (a) did not observe the procedures that were required by law to be observed in relation to the making of the decision or the proposed decision, contrary to paragraphs 20(2)(b) and/or 21(2)(b) of the *Judicial Review Act 1991* (JRA);
- (b) were not authorised by the enactment under which the decision or the proposed decision was purported to be made, contrary to paragraphs 20(2)(d) and/or 21(2)(d) of the JRA;
- (c) was or would be an improper exercise of the power conferred by the enactment under which it was made or purported to be made because the exercise of the power in such a way is or would be uncertain, contrary to paragraphs 20(2)(e) and 23(h) and/or 21(2)(e) and 23(h) of the JRA; and/or
- (d) involved an error of law, contrary to paragraphs 20(2)(f) and/or 21(2)(f) of the JRA;

by deferring, to a separate, future approvals process under the *Water Act 2000* consideration of central issues relevant to the grant of the environmental authority under the EPA and the mining lease under the MRA. The decisions and/or conduct thereby lacked finality and were void *ab initio*. The principle of finality requires that, in deciding to approve, whether with or without conditions, an application, a decision-maker is bound to dispose of the application, fully and finally, and that it may not defer its decision on an essential matter, or delegate its power to do so to some other person or body for determination. The requirement to obtain a water licence under the *Water Act* is not a case where it is plainly possible for the mine proposed at the time of the decision to proceed unaffected by the restriction in the condition. It cannot be predicted *a priori* how the approval process for the water licence will affect the mine. If the application for a water licence under the *Water Act* were refused, it would prevent the mine proceeding at all. In addition, the approval process for a water licence under the *Water Act* may alter the mine in a fundamental respect. The extent or the design of the mine may have to be altered to avoid deleterious impacts on groundwater. Whether that in fact will occur cannot be predicted *a priori*.

Errors in Land Court decisions

2. If the Applicant is successful in proceedings No. 4249/14 challenging and setting aside the decisions of the Land Court regarding the environmental authority and the mining lease, then the decision of the EPA Minister and the decision and/or conduct of the MRA Minister are void *ab initio* as:

- (a) the procedures that were required by law to be observed in relation to the making of the decision or the proposed decision were not observed, contrary to paragraphs 20(2)(b) and/or 21(2)(b) of the JRA; and
- (b) the decision or proposed decision were not authorised by the enactment under which they was purported to be made, contrary to paragraphs 20(2)(d) and/or 21(2)(d) of the JRA;

because a lawful recommendation from the Land Court is a pre-requisite under the EPA for the EPA Minister to grant an environmental authority and under the MRA for the MRA Minister to grant a mining lease.

The Applicant claims -

1. An order setting aside the decision of the EPA Minister and remitting the application for an environmental authority to him to reconsider according to law.
2. An order setting aside any decision of the MRA Minister and remitting the application for a mining lease to him to reconsider according to law.
3. Costs.

TO THE RESPONDENTS:

A directions hearing in this application (and any claim by the applicant for an interlocutory order) will be heard by the Court at the time, date and place specified below. If there is no attendance before the Court by you or by your counsel or solicitor, the application may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time, you may file and serve a notice of address for service

APPOINTMENT FOR DIRECTIONS HEARING

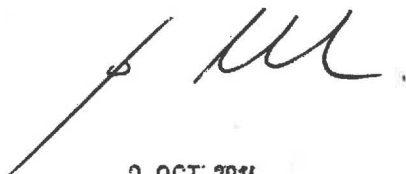
Time and date:

10.00 A.M.

11/12/2014

Place: QEII Courts of Law Complex
415 George Street, Brisbane Qld 4000

Signed:



Dated:

- 8 OCT 2014

PARTICULARS OF THE APPLICANT:

Name: Coast and Country Association of Queensland Inc
Address: c/o Environmental Defenders Office (Qld) Inc, 30
Hardgrave Road, West End, Qld, 4101

Applicant's solicitor's name: Sean Ryan
And firm name: Environmental Defenders Office (Qld) Inc
Solicitor's Business address: 30 Hardgrave Road, West End, Qld, 4101
Address for service: 30 Hardgrave Road, West End, Qld, 4101
DX (if any): [none]
Telephone: (07) 3211 4466
Fax: (07) 3211 4655
E-mail address: edoqld@edo.org.au

Signed: *Environmental Defenders Office*

Description: Solicitors for Applicant

Dated: *7 October 2014*

This application is to be served on:

Minister for the Environment and Heritage Protection
c/- Litigation Unit
Department of the Environment and Heritage Protection
Level 7, 400 George Street, Brisbane, Qld, 4001

Minister for Natural Resources and Mines
c/- Department of Natural Resources and Mines
Level 17, 61 Mary Street, Brisbane, Qld, 4000

Hancock Coal Pty Ltd
c/- Ashurst Australia
Attention: John Briggs and Ian Innes
Level 38, 123 Eagle Street, Brisbane, Qld, 4000