

BETWEEN: **ANVIL HILL PROJECT WATCH ASSOCIATION INC**
Applicant

AND: **MINISTER FOR THE ENVIRONMENT AND WATER
RESOURCES**
First Respondent

AND: **CENTENNIAL HUNTER PTY LIMITED
ACN 101 509 111**
Second Respondent

APPLICATION FOR AN ORDER OF REVIEW
(Order 54, Form 54)

Application for an order of review of a decision by a delegate of the first respondent, made under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (“**EPBC Act**”) on 19 February 2007, that the proposed action by the second respondent to construct and operate an open cut coal mine and ancillary facilities, known as the Anvil Hill Project (EPBC Referral No. 2007/3228), is not a controlled action.

The applicant is a person who is aggrieved by the decision, pursuant to the widened standing provided by section 487 of the EPBC Act, because:

1. The applicant is incorporated in Australia.
2. During the 2 years immediately before the decision the applicant has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment.
3. At the time of the decision the objects or purposes of the applicant included the protection or conservation of, or research into, the environment.

APPLICATION FOR AN ORDER
OF REVIEW
Filed on behalf of the applicant
Order 54, Form 56

Environmental Defenders Office (NSW) Ltd
Level 1, 89 York Street
Sydney NSW 2000
Tel: (02) 9262 6989
Fax: (02) 9262 6998
Email: ian.ratcliff@edo.org.au

The grounds of the application are –

1. Under section 5(1)(f) of the *Administrative Decisions (Judicial Review) Act 1977*, that the decision involved an error of law, namely, the delegate erred in construing the meaning of “all adverse impacts (if any) the action is likely to have on the matter protected by each provision of Part 3” in section 75(2) of the EPBC Act by requiring a measurable or identifiable impact to the matters protected by Part 3 of the Act caused by the greenhouse gas emissions from the use of coal from the Anvil Hill Project beyond or additional to the contribution that the greenhouse gas emissions make to climate change, thereby impacting on the matters protected by Part 3 of the EPBC Act.
2. Under sections 5(1)(e) and 5(2)(b) of the *Administrative Decisions (Judicial Review) Act 1977*, that the making of the decision was an improper exercise of the power conferred by section 75 of the EPBC Act because the delegate failed to take a relevant consideration into account in the exercise of the power when assessing “all adverse impacts (if any) the action is likely to have on the matter protected by each provision of Part 3” in section 75(2) of the EPBC Act, namely, the delegate failed to consider that the greenhouse gas emissions that will result from the action will contribute to “loss of climatic habitat caused by anthropogenic emissions of greenhouse gas”, which is a key threatening process included in the list established under section 183 of the EPBC Act.
3. Under sections 5(1)(e) and 5(2)(b) of the *Administrative Decisions (Judicial Review) Act 1977*, that the making of the decision was an improper exercise of the power conferred by section 75 of the EPBC Act because the delegate failed to take a relevant consideration into account in the exercise of the power when assessing whether the action “is likely to have a significant impact on a listed threatened species or a listed threatened ecological community” for the purposes of deciding whether sections 18 and 18A are controlling provisions for the action under section 75(1) of the EPBC Act, namely, the delegate failed to consider that the greenhouse gas emissions that will result from the action will contribute to “loss of climatic habitat caused by anthropogenic emissions of greenhouse gas”, which is a key threatening process included in the list established under section 183 of the EPBC Act.

The applicant claims –

1. An order setting aside the decision of the delegate of the first respondent on 19 February 2007 that the proposed action by the second respondent to construct and operate an open cut coal mine and ancillary facilities, known as the Anvil Hill Project (EPBC Referral No. 2007/3228), is not a controlled action.
2. An order remitting the decision referred to in order 1 to the first respondent (or a duly appointed delegate of the first respondent) for further consideration and decision.
3. An order that the respondents pay the applicant’s costs of the application.

This application was prepared by Chris McGrath of counsel.

Date: 17 May 2007

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Solicitor for the applicant

NOTICE TO THE RESPONDENTS

To the first respondent of Parliament House in the Australian Capital Territory, c/- Australian Government Department of the Environment and Water Resources, John Gorton Building, King Edward Terrace, Parkes in the Australian Capital Territory:

And to the second respondent of Level 18, BT Tower, 1 Market Street, Sydney, in the State of New South Wales:

This application has been set down for the time and place stated below. If you or your legal representative do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interlocutory relief may be heard.

Before any attendance at Court, you must file an appearance in the Registry.

Time and date of hearing: 2007 at 9.30 am (for directions only).

Place: New South Wales District Registry
Level 16, Law Courts Building
Queens Square
Sydney NSW 2000

Date: 17 May 2007

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Registrar

The applicant's address for service is:

c/- Ian Ratcliff
Solicitor
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Sydney NSW 2000
Tel: (02) 9262 6989
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