

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/09/2016 10:15:14 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)
File Number:	QUD726/2016
File Title:	Australian Conservation Foundation Incorporated v Minister for the Environment & Anor
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 19/09/2016 3:32:20 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Notice of appeal

No. _____ of 2016

Federal Court of Australia
District Registry: Queensland
Division: General

On appeal from the Federal Court

AUSTRALIAN CONSERVATION FOUNDATION INCORPORATED

Appellant

MINISTER FOR THE ENVIRONMENT and another named in the schedule

Respondents

To the Respondents

The Appellant appeals from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Harry Gibbs Commonwealth Law Courts Building, 119 North Quay, Brisbane

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of	Australian Conservation Foundation Incorporated (Appellant)
Prepared by	Michael Berkman, Solicitor
Law firm	Environmental Defenders Office (Qld) Inc.
Tel (07) 3211 4466	Fax
Email	mberkman@edoqld.org.au ; edoqld@edoqld.org.au
Address for service	30 Hardgrave Rd, West End QLD 4101



The Appellant appeals from all of the orders of the Federal Court given on 29 August 2016 at Sydney.

The Minister provided a statement of reasons (the **Statement of Reasons**) for the decision he made on 14 October 2015 under ss 130 and 133 of the *Environment Protection and Biodiversity Act 1999* (Cth) (the **EPBC Act**) to approve with conditions a proposal to develop and operate a new open-cut and underground mine based on Moray Downs, a property 160km northwest of Clermont, a 189km rail link and associated infrastructure - the Carmichael Coal Mine and Rail project.

Grounds of appeal

1. The primary judge:
 - a. erred by interpreting the Statement of Reasons as including a determination by the Minister as to whether or not the physical effects of climate change on the Great Barrier Reef were an “impact” of the action within the meaning of s 527E of the EPBC Act;
 - b. should have found that the Minister failed to apply s 527E when considering the physical effects of climate change on the Great Barrier Reef.
2. Alternatively, if, on a proper interpretation of the Statement of Reasons, the Minister did purport to determine whether or not the physical effects of climate change on the Great Barrier Reef were an “impact” of the action within the meaning of s 527E of the EPBC Act, then the primary judge:
 - a. erred by failing to hold that the Minister misdirected himself as to the correct question under, or that he misapplied, ss 82(1), 136(2)(e) and 527E of the EPBC Act; or
 - b. erred by failing to hold that, on the facts as found by the Minister in paragraphs 131-141 of the Statement of Reasons, it was not open to the Minister to determine that the physical effects of climate change on the Great Barrier Reef were not an “impact”, within the meaning of ss 82(1) and 527E, properly construed.

**Orders sought**

1. The appeal be allowed.
2. The orders made by his Honour on 29 August 2016 and 8 September 2016 be set aside and the following orders substituted:
 - a. An order in the nature of certiorari calling up and quashing the decision.
 - b. An order by way of injunction restraining the Respondent from taking any steps to give effect to the decision.
 - c. The Respondents pay the Appellant's costs of and incidental to the application.
3. The Respondents pay the Appellant's costs of and incidental to the appeal to the Full Court.

Appellant's address

The Appellant's address for service is:

Place: 30 Hardgrave Rd, West End QLD 4101.

Email: edoqld@edoqld.org.au; mberkman@edoqld.org.au

The Appellant's address is Level 1, 60 Leicester Street, Carlton VIC 3053

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 19 September 2016


Signed by Sean Ryan
Lawyer for the Appellant



Schedule

No. of 2016

Federal Court of Australia
District Registry: Queensland
Division: General

Respondents

Second Respondent: **ADANI MINING PTY LTD ACN 145 455 205**

Date: 19 September 2016