

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: BS4189/16

Applicant **LAND SERVICES OF COAST AND COUNTRY  
INC**

AND

First Respondent **CHIEF EXECUTIVE, DEPARTMENT OF  
ENVIRONMENT AND HERITAGE  
PROTECTION**

AND

Second Respondent **ADANI MINING PTY LTD**

**AFFIDAVIT**

I, Katherine Jean Bennink, care of Department of Environment and Heritage Protection (the Department), 99 Hospital Road, Emerald in the State of Queensland, Public Servant sincerely and solemnly affirms and declares:

1. As of 2 February 2016, I was employed by the Department as Manager (Assessment), in the Environmental Services and Regulation Division of the Department. Since then, my position title has changed to Manager Environmental Services in the same Division.


***Judicial review application***

2. I am aware that the Applicant in this matter (Land Services) has applied to the Supreme Court under the *Judicial Review Act 1991*, seeking to review a decision

---

Page 1

Signed:  .....  
Deponent

Taken by:  .....  
Solicitor/Barrister/Justice of the Peace/  
Commissioner for Declarations

---

Affidavit of Katherine Jean Bennink

Filed on behalf of the first respondent  
Form 46  
Rule 431  
Per Gerard Sammon  
PL3/EHP256/69/SAG

GR Cooper  
CROWN SOLICITOR  
11<sup>th</sup> Floor, State Law Building  
50 Ann Street  
Brisbane Qld 4000  
Telephone 07 3239 6377  
Facsimile 07 3239 3456



(the Decision) I made on 2 February 2016 to approve an Environmental Authority (EPML01470513) (the Environmental Authority) to the Second Respondent, Adani Mining Pty Ltd (Adani) in respect of the Carmichael Coal Mine proposed by Adani.

3. The Decision was made under section 194 of the *Environmental Protection Act 1994* (the EP Act).
4. I have read the application for judicial review dated 26 April 2016, and an affidavit in support of that application by Mr Derec Davies on behalf of Land Services affirmed on 26 April 2016.
5. I note that the affidavit by Mr Davies attaches a number of documents as exhibits, including a copy of the following documents:
  - (a) a recommendation decision of the Land Court made on the 15<sup>th</sup> of December 2015, on objections made to the grant of mining leases and an environmental authority under the EP Act, for the Carmichael Mine (Exhibit DD-1 to Mr Davies' affidavit); and
  - (b) the Environmental Authority I approved, dated 2 February 2016 (Exhibit DD-2 to Mr Davies' affidavit); and
  - (c) a letter from me to Mr Davies dated 29 March 2016, attaching a statement of reasons for the Decision (Exhibit DD-4 to Mr Davies' affidavit).
6. I agree that the documents exhibited to Mr Davies' affidavit are accurate copies of the documents, and I will refer to those documents in my affidavit.

***Delegation to make the Decision***

7. As Manager (Assessment), in the Environmental Services and Regulation Division of the Department, I had a delegation to make the Decision under section 194 of the EP Act to approve the Environmental Authority, as 'Administering Authority' as that term is used in section 194. Attached to my affidavit marked 'KB-1' is a copy

Page 2

Signed: . . .  . . .  
Deponent

Taken by:  . . .  
Solicitor/Barrister/Justice of the Peace/  
Commissioner for Declarations



of an instrument of delegation dated 4 December 2014, which delegates to my level of employment, as Manager, Environmental Services and Regulation, the authority to make decisions under section 194 of the EP Act.


8. The delegation to my level as Manager, Environmental Services and Regulation, is contained on page 4 of exhibit KB-1. Under Column 1 headed 'Section Number', the number 194 means section 194 of the EP Act. Column 2 describes the power delegated as being the power to make a 'Final decision on application', and the Level of Office to which the delegation is given in column 3 is an office holder at level 3.
9. What is included in a level 3 office is described in column 2 of schedule 2 of the instrument of delegation (page 9). Level 3 includes my position as 'Manager, Environmental Services and Regulation', which is a reference to the Environmental Services and Regulation Division of the Department.
10. Attached to my affidavit and marked 'KB-2' is a copy of organisation charts for the Environmental Services and Regulation Division of the Department, dated 17 December 2015 and 20 May 2016, on the top left-hand side of each document. Each of those documents identifies my position in the box headed 'Business Centre – Coal Emerald' as 'MGR Assessment'. That is a shortening for the title of my position of Manager (Assessment) in the Environmental Services and Regulation Division.

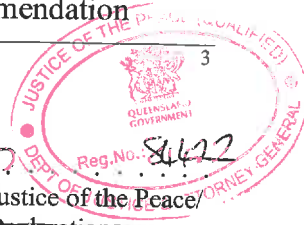
***Documents considered in making Decision***

11. In the application by Adani for an Environmental Authority the Department prepared a draft environmental authority dated 28 August 2014, for the proposed Carmichael Coal Mine which was given the number EPML01470513. A copy of that draft environmental authority marked 'KB-3' is attached to my affidavit.
12. The draft environmental authority a copy of which is exhibit KB-3 is the draft environmental authority considered by the Land Court in its recommendation

Page 3

Signed: . . .  . . .  
Deponent

Taken by: . . .  . . .  
~~Solicitor/Barrister/Justice of the Peace~~  
~~Commissioner for Declarations~~




decision which is exhibit DD-1 to Mr Davies' affidavit. The draft environmental authority is specifically referred to in order 2 made by the Land Court.

13. I considered the draft environmental authority KB-3 in making my decision to approve the Environmental Authority to Adani. Indeed the draft environmental authority was the basis for the Environmental Authority approved to Adani, supplemented by the recommendations made by the Land Court in its recommendation decision.
14. In considering my decision on approving the Environmental Authority to Adani, I read and considered the recommendations decision of the Land Court. Relevantly for present purposes, I read paragraphs [24]-[28] and [49]-[58] of the recommendations decision, which include the provisions of section 3 and section 5 of the EP Act.
15. I took into account and applied the objects of the EP Act as stated in section 3 of the EP Act, when making my decision to approve the Environmental Authority to Adani. The purpose of the conditions of the Environmental Authority is to balance protection of the environment against the nature of the Carmichael Coal Mine proposed by Adani, and to minimise and mitigate the potential adverse environmental effects of that Mine to the receiving environment. I am regularly called upon to make decisions under the EP Act and I am aware of the objects of that Act. I am also aware that the Act requires that when functions are to be performed or powers are to be exercised under the Act, they are to be performed or exercised in the way which best achieves the objects. I was aware of these matters at the time when I made the decision to approve the Environmental Authority to Adani.
16. When considering my decision to approve the Environmental Authority, I also considered a document headed 'Request for Statutory Approval' dated 2 February 2016, a copy of which is attached to my affidavit marked 'KB-4'. The first page of that document summarises legal advice given, and that part of the page which summarises legal advice given is redacted from KB-4 attached to my affidavit.

Page 4

Signed: . . . *K. B. . . .* . . .  
Deponent

Taken by: *[Signature]*  
  
~~Solicitor/Barrister/Justice of the Peace/  
Commissioner for Declarations~~

17. That document summarised the history of the process for approval of the environmental authority sought by Adani, and in particular the effect of the recommendations of the Land Court about the need for additional conditions (under the heading '1.0 Summary' on the first page). Document KB-4 also summarised the application of section 194 of the EP Act, under the heading '2.0 Legislation' commencing on page 6.

All the facts and circumstances deposed to are within my knowledge and belief save such as deposed to from information only and my means of knowledge and sources of information appear on the face of this affidavit.

Affirmed by Katherine Jean Bennink on 16 June 2016  
at Emerald in the presence of:

..... *K. Bennink* .....  
Deponent

..... *D. Hales* .....  
~~Solicitor/Barrister/Justice of the Peace/  
Commissioner for Declarations~~  
DIANNE LYNNE HALES



Page 5

Signed: ..... *K. Bennink* .....  
Deponent

Taken by: ..... *D. Hales* .....  
~~Solicitor/Barrister/Justice of the Peace/  
Commissioner for Declarations~~

