

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: 4189/16

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**

**AMENDED APPLICATION FOR A STATUTORY ORDER OF REVIEW**

(Amended on 5 August 2016 pursuant to leave granted on 5 August 2016)

Application to review the decision of a delegate of the First Respondent (**the delegate**) made on 2 February 2016 to approve the site-specific application by the Second Respondent for the Carmichael Coal Mine under section 194 of the *Environmental Protection Act 1994* (Qld) (**the decision**).

The Applicant is aggrieved by the decision because -

1. The Applicant was at all material times and is an association incorporated in Queensland whose objects include the protection of the environment.
2. The Applicant made a properly made objection under section 260 of the *Mineral Resources Act 1989* (Qld) (**MRA**) to the grant of the mining lease for the Carmichael Coal Mine.
3. The Applicant made a properly made submission under section 160 of the *Environmental Protection Act 1994* (Qld) (**EPA**) to the grant of the environmental authority for the Carmichael Coal Mine.
4. The Applicant gave an objection notice under section 182 of the EPA to the administering authority requesting that its submission be taken to be an objection to the application for the environmental authority for the Carmichael Coal Mine.
5. 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 sections 185-192 of the EPA for the application for the environmental authority for the Carmichael Coal Mine.
6. The Applicant had a right that the decision would be made by the First Respondent or their delegate according to law.

**AMENDED APPLICATION FOR A**  
**STATUTORY ORDER OF REVIEW**  
Filed on Behalf of the Applicant  
Form 54, Version 1  
Uniform Civil Procedure Rules 1999  
Rules **382 and 566**

Name: Environmental Defenders Office  
(Qld) Inc  
Address: 30 Hardgrave Road  
West End, Qld, 4101  
Phone No: (07) 3211 4466  
Fax No: (07) 3844 0766

## Background

1. On 2 February 2016, the delegate decided to approve the site-specific application by the Second Respondent for the Carmichael Coal Mine under section 194 of the EPA.
2. Pursuant to section 5 of the EPA the delegate was commanded to exercise the power in section 194 of the EPA “in the way that best achieves the object of this Act”.
3. The object of the EPA is set out in section 3, namely to “protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (*ecologically sustainable development*)”.
4. The delegate provided reasons for the decision in accordance with section 35 of *Judicial Review Act 1991* (Qld) on 29 March 2016 (**the reasons**).
5. The reasons do not refer to section 3 or section 5 of the EPA explicitly, implicitly or in substance.

## Grounds of Review

### Ground 1

~~The decision involved an error of law in that the delegate failed to apply the command in section 5 of the EPA when exercising the power under section 194 of the EPA.~~

~~(Section 20(2)(e)(f) of the *Judicial Review Act 1991* (Qld))~~

### Ground 1A (in the alternative to Ground 1)

~~The delegate failed to consider a relevant consideration, namely the command in section 5 of the EPA, when exercising the power under section 194 of the EPA.~~

~~(Sections 20(2)(e) and 23(b) of the *Judicial Review Act 1991* (Qld))~~

### Ground 1

The decision involved an error of law in that the delegate misconceived sections 3 and 5 of the EPA, in particular the delegate failed to appreciate that she was required to consider and be positively satisfied her decision to approve (with or without conditions) or refuse the application for the environmental authority was the best way to protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological process on which life depends.

(Section 20(2)(f) of the *Judicial Review Act 1991* (Qld))

## Ground 2

The decision involved a jurisdictional error in that the delegate failed to apply herself to the real question to be decided pursuant to section 5 of the EPA when performing the function and exercising the power under section 194 of the EPA. Section 5 required her to be positively satisfied that in making the decision she was performing her function and exercising her power in the way that best achieves the object of the EPA. This required her to consider and determine whether, in performing the function and exercising the power in that way, she would be adopting the best way of protecting Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends. However, the delegate did not do this. She did not consider and determine this question.

(Section 20(2)(f) of the *Judicial Review Act 1991 (Qld)*)

### **The applicant claims -**

1. An order setting aside the decision and remitting the application for an environmental authority under the EPA to the First Respondent to be determined according to law.
2. 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:

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

Signed:

Dated:

**PARTICULARS OF THE APPLICANT:**

Name: Land Services of Coast and Country 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) 3844 0766  
E-mail address: edoqld@edo.org.au

Signed:



Description: Solicitor for Applicant

Dated: 5 August 2016

This amended application is to be served on:

Chief Executive  
Department of Environment and Heritage Protection  
c/- Litigation Unit  
Environmental Services & Regulation  
Level 7, 400 George Street, Brisbane, Qld, 4001

Adani Mining Pty Ltd  
Level 25, 10 Eagle Street, Brisbane, Qld, 4000