

**COURT OF APPEAL**  
**SUPREME COURT OF QUEENSLAND**

CA NUMBER: 9268 / 05

NUMBER: BD 4658 of 2004

APPLICANT/APPELLANT: **CAROL JEANETTE BOOTH**

FIRST RESPONDENT: **FRIPPERY PTY LTD (ACN 010 890 007)**

SECOND RESPONDENT: **MERVYN MEYER THOMAS**

THIRD RESPONDENT: **PAMELA ANN THOMAS**

**APPLICATION TO COURT OF APPEAL**

TAKE NOTICE that the Applicant/Appellant is applying to the Court of Appeal under section 4.1.57 of the *Integrated Planning Act 1997* for the following order:

1. That the Applicant/Appellant be granted leave to appeal against that part of the order made by the Planning and Environment Court in *Booth v Frippery Pty Ltd and Ors* [2005] QPEC 095 dismissing an application for enforcement orders under section 173D of the *Nature Conservation Act 1992*.

AND if, despite the time limit of 30 business days for filing the application for leave to appeal stated in section 4.1.57 of the *Integrated Planning Act 1997* (which the application complies with), the Court considers an application for an extension of time for filing the application is necessary, the Applicant/Appellant applies for the following order:

2. That the Applicant/Appellant be granted an extension of time for filing the application for leave to appeal.

**THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE -**

Date of judgment: 22 September 2005

Description of Proceedings: BD 4658 of 2004

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APPLICATION TO COURT OF  
APPEAL  
Filed on behalf of the Appellant  
Form 69, UCPR r 779(2)

Environmental Defenders Office (Qld) Inc  
Level 9, 193 North Quay  
Brisbane Qld 4000  
Telephone: (07) 3211 4466  
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Description of parties involved in the proceedings:

Carol Jeanette Booth as Applicant

and

Frippery Pty Ltd (ACN 010 890 007) as First Respondent

Mervyn Meyer Thomas as Second Respondent

Pamela Ann Thomas as Third Respondent

Name of Primary Court Judge: His Honour Judge Pack DCJ

Primary Court: Planning and Environment Court

Location of Primary Court: Townsville

**THE REASONS JUSTIFYING THE GRANTING OF LEAVE ARE -**

1. The Applicant/Appellant had standing under section 173D of the *Nature Conservation Act 1992* to commence the proceedings before the Planning and Environment Court. Her interest in the proceedings and in the appeal is to protect the public interest in the conservation of nature, which is the purpose of the *Nature Conservation Act 1992*. She has no financial interest in the outcome of the proceedings or of the appeal. The proceedings before the Planning and Environment Court and the appeal are consistent with the intention of the Parliament evident in the insertion of sections 173A-173N into the *Nature Conservation Act 1992* to allow persons such as the Applicant/Appellant to undertake proceedings to enforce the Act.
2. The grounds of appeal set out in the Notice of Appeal exhibited to the affidavit of Jo-Anne Bragg (affirmed 3 November 2005) involve errors or mistakes in law on the part of the Planning and Environment Court. In summary and subject to the specific grounds set out in the Notice of Appeal, these errors or mistakes in law relate to:
  - (a) the construction and application of section 88(3) of the *Nature Conservation Act 1992*;
  - (b) the construction and application of sections 48 and 51 of the *Animal Care and Protection Act 2001*;
  - (c) the principles of causation as a matter of law;
  - (d) failure to consider relevant considerations in the exercise of the discretions under sections 173D-173H of the *Nature Conservation Act 1992*;
  - (e) factual findings or inferences that were not reasonably open on the evidence or otherwise involved errors or mistakes of law; and
  - (f) failing to give adequate reasons.

3. In consideration of the grounds of appeal set out in the Notice of Appeal exhibited to the affidavit of Jo-Anne Bragg (affirmed 3 November 2005), the decision of the Planning and Environment Court from which leave to appeal is sought is attended with sufficient doubt to warrant its being reconsidered and also, supposing the decision below to be wrong, substantial injustice would result if leave were refused.
4. If the Court considers an application for an extension of time for filing the application for leave to appeal is necessary, the reason for not filing the application for leave to appeal or the Notice of Appeal within 28 days of the judgment appealed from is that section 4.1.57 of the *Integrated Planning Act 1997* provides a time limit of 30 business days for filing the application for leave to appeal. The application for leave to appeal was filed on the 30<sup>th</sup> business day after the decision was given to the Applicant/Appellant.

This application will be heard by the Court of Appeal at Brisbane

on: ..... 2005

at: 10.15am

Filing date: 3 November 2005

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Registrar

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the hearing of the application the Appellant/Applicant intends to rely on the following affidavit:

- (a) Affidavit of Jo-Anne Bragg (affirmed 3 November 2005)

**PARTICULARS OF THE APPLICANT / APPELLANT**

Name: Carol Jeanette Booth  
 Residential address: 32 Forbes Street, West End in the State of Queensland  
 Applicant's solicitor's name and firm name:  
 Jo-Anne Bragg (Principal Solicitor)  
 Environmental Defender's Office (Qld) Inc  
 Address for service: Level 9, 193 North Quay  
 Brisbane Qld 4000  
 Telephone: (07) 3211 4466  
 Facsimile: (07) 3211 4655  
 Email: [edoqld@edo.org.au](mailto:edoqld@edo.org.au)

**PARTICULARS OF THE RESPONDENTS**

Name: Frippery Pty Ltd, Mervyn Meyer Thomas and Pamela Ann Thomas  
 Business address: 376 Volk Road, Mutarnee in the State of Queensland  
 Respondent's solicitor's name and firm name:  
 Keta Tamblyn (Senior Associate)  
 Roberts Nehmer McKee  
 Address for service: 111 Charters Towers Road  
 Townsville Qld 4810  
 Telephone: (07) 4772 2177  
 Facsimile: (07) 4721 1648  
 Email: [ktamblyn@rnmck.com.au](mailto:ktamblyn@rnmck.com.au)

Signed: .....  
 Jo-Anne Bragg

Description: Solicitor for the Applicant/Appellant

Dated: 3 November 2005

This application is to be served on:

Frippery Pty Ltd, M Thomas and P Thomas  
 c/- Keta Tamblyn (Senior Associate)  
 Roberts Nehmer McKee  
 111 Charters Towers Road  
 Townsville Qld 4810

Chief Executive / Director-General  
 Environmental Protection Agency  
 160 Ann Street  
 Brisbane Qld 4000