

MINISTER FOR ENVIRONMENT, HERITAGE AND  
THE ARTS  
Applicant

ROCKY LAMATTINA AND SONS PTY LTD  
First Respondent

ROCCO LAMATTINA  
Second Respondent

**STATEMENT OF CLAIM**

1. The Federal Court has jurisdiction to hear and determine this matter by reason of section 481 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**the Act**) and section 39B(1A)(c) of the *Judiciary Act 1903* (Cth).
2. The Applicant has and had at all material times the functions and powers conferred upon him pursuant to section 481(1) of the Act.
3. At all material times, the first Respondent (**RLSPL**) was:
  - 3.1. a body corporate duly incorporated pursuant to the Corporations Act;
  - 3.2. able to sue and be sued in its corporate name;
  - 3.3. until about 28 June 2006, the registered proprietor of the property known as "Acacia Downs" and more properly described as Certificate of Title Volume 5400 Folio 622 Sections 324, 325, 326, 327 and 328 in the Hundred of Hynam in the State of South Australia (**the property**).
4. RLSPL purchased the property on 2 April 2004 for the amount of \$2,001,900.00.
5. At all material times, the second Respondent (**Lamattina**) was:
  - 5.1. a director and executive officer of RLSPL;
  - 5.2. acting in his capacity as a director and executive officer of RLSPL; and
  - 5.3. in respect of each of the matters pleaded herein relating to his conduct acting within the scope of his actual or apparent authority at the time.

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Filed on behalf of the Applicant by:

Australian Government Solicitor  
Level 18, 25 Grenfell Street  
Adelaide SA 5000  
DX105 Adelaide

Contact: Kate Sullivan

File ref: 06086640  
Telephone: 08 8205 4534  
Facsimile: 08 8205 4499  
E-mail: kate.sullivan@ags.gov.au

6. The South Eastern Red-tailed Black Cockatoo (*Calyptorhynchus banksii graptogyne*) (the **Cockatoo**) is listed as an endangered species pursuant to the Act.

Particulars

Sub-section 178(1) of the Act provides that the Minister must, by instrument published in the *Gazette*, establish a list of threatened species divided into a number of categories, including 'endangered'. In 1994 the Cockatoo was listed as endangered under the *Endangered Species Protection Act 1992* (the ESP Act). On 16 July 2000 all ESP Act listings were transferred to the Act by instrument published in the *Gazette No. S407*.

7. The property is located within the known range of the Cockatoo.

Particulars

The Cockatoo occurs as a single population in a small area of south-eastern Australia delimited by Keith to Lucindale to Mt Gambier in South Australia and Portland to Casterton, Toolondo, Natimuk, Dimboola, Nhill and Kaniva in Victoria more particularly shown in Attachment A.

8. Section 18(3) of the Act proscribes that a person must not take an action that has, will or is likely to have a significant impact on a listed threatened species included in the endangered species.

9. In or about September and October 2004 RLSPL took an action (**the action**) namely caused the clearance of approximately 170 trees of the species *E.leucoxydon*, *E.camaldulensis* and *E.fasciculosa* (**the vegetation**) from the property.

Particulars

In or about September and October 2004, Lamattina identified and marked a number of trees on the property and directed Miro Cherulumbas, an agent or employee of RLSPL, to remove the vegetation from the property with an excavator and loader.

10. The action was and is likely to have a significant impact on the Cockatoo as:

- 10.1. The action has, will or is likely to lead in a long term decrease in the size of a population of the species.

Particulars

The removal of the vegetation included the removal of a number of potential nest trees and has led, or is likely to lead, to reduced nesting success by the Cockatoo nesting in the area. Reduced nesting success in turn will lead to reduced recruitment of new cockatoos into the population, which is likely to lead to a decrease in total population size.

- 10.2. The action has, or will or is likely to reduce the area of occupancy of the Cockatoo.

Particulars

By reducing the local breeding population of the Cockatoo, the action will, or is likely to also reduce the area of occupancy of stringybark feeding habitat which adjoins the site.

- 10.3. The action has, will or is likely to adversely affect habitat critical for the survival of the Cockatoo.

Particulars

The property is part of an area mapped as nesting habitat critical for the survival of the Cockatoo, and also is within a region recognised as one of the strongholds of nesting Cockatoos in South Australia. The action has or is likely to have removed habitat critical for the survival of the Cockatoo.

- 10.4. The action has, will or is likely to disrupt the breeding cycle of the population of the Cockatoo.

Particulars

Cockatoos return to the same areas to breed, therefore pairs which nested in the affected area will return to this area and be unable to find suitable hollows. The loss of nesting habitat will, or is likely to cause at least temporary, and possibly permanent disruption to nesting by affected breeding Cockatoos.

- 10.5. The action has, will or is likely to modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the Cockatoo is likely to decline.

Particulars

The Cockatoo has a small breeding population of approximately 300 pairs. Cockatoos have traditional nesting colony areas to which they return to breed. The location of all Cockatoo nesting areas is not known, however the property is within the modelled habitat range. The area where the action occurred could have supported up to six nesting pairs of Cockatoos. Removal of such a number of potential nesting trees will, or is likely to lead to reduced nesting success in this area. Reduced nesting success will, or is likely to in turn lead to reduced recruitment of new Cockatoos into the population which will lead to a decrease in total population size.

- 10.6. The action has, will or is likely to interfere with the recovery of the Cockatoo.

Particulars

The Cockatoo is considered endangered because of its small population size and continuing habitat loss. The action has removed existing and future nesting habitat and will, or is likely to interfere with the recovery of the Cockatoo.

11. By reason of the matters referred to in paragraphs 9 and 10, RLSPL took an action which was and is likely to have a significant impact on a listed threatened species included in the endangered category and thereby contravened section 18(3)(b) of the Act.
12. A contravention of section 18(3)(b) of the Act is a contravention of a civil penalty provision and as such makes RLSPL liable to pay a pecuniary penalty pursuant to section 481 of the Act.
13. By reason of the matters set out at paragraphs 5, 9 and 10 and because:
- 13.1. he aided, abetted, counselled or procured a contravention of a civil penalty provision; and
- 13.2. he was directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision

Lamattina has contravened section 484 of the Act.

14. In the alternative, by reason of the matters set out at paragraphs 5, 9, 10 and 12 and because:
- 14.1. he was an executive officer of RLSPL and knew that, or was reckless or negligent as to whether the contravention of a civil penalty provision would occur; and
- 14.2. he was in a position to influence the conduct of RLSPL in relation to the contravention; and
- 14.3. he failed to take all reasonable steps to prevent the contravention

Lamattina has contravened section 494 of the Act.

15. On or about 28 June 2006, RLSPL transferred the property to Jason Tranter No1 Pty Ltd for the amount of \$1,373,600.00.
16. On or about 2 August 2006, RLSPL purchased the following properties from Jason Oakley Tranter:
- 16.1.1. Certificate of Title Volume 10681 Folio 416 for the amount of \$1,276,030.00
- 16.1.2. Certificate of Title Volume 10685 Folio 941 for the amount of \$2,240,592.00; and
- 16.1.3. Certificate of Title Volume 8504 Folio 778 for the amount of \$2,240,592.00. (collectively **the new properties**)
17. The new properties are located within the known range of the Cockatoo.

The Applicant claims the relief specified in the application.

Date: 19<sup>th</sup> December 2007

..... S. J. Court  
Sarah Court  
A solicitor employed by  
Australian Government Solicitor  
Solicitor for the Applicant

**CERTIFICATE OF LEGAL PRACTITIONER**

I, Sarah Court, certify to the Court that, in relation to the pleading dated 19<sup>th</sup> December 2007 filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

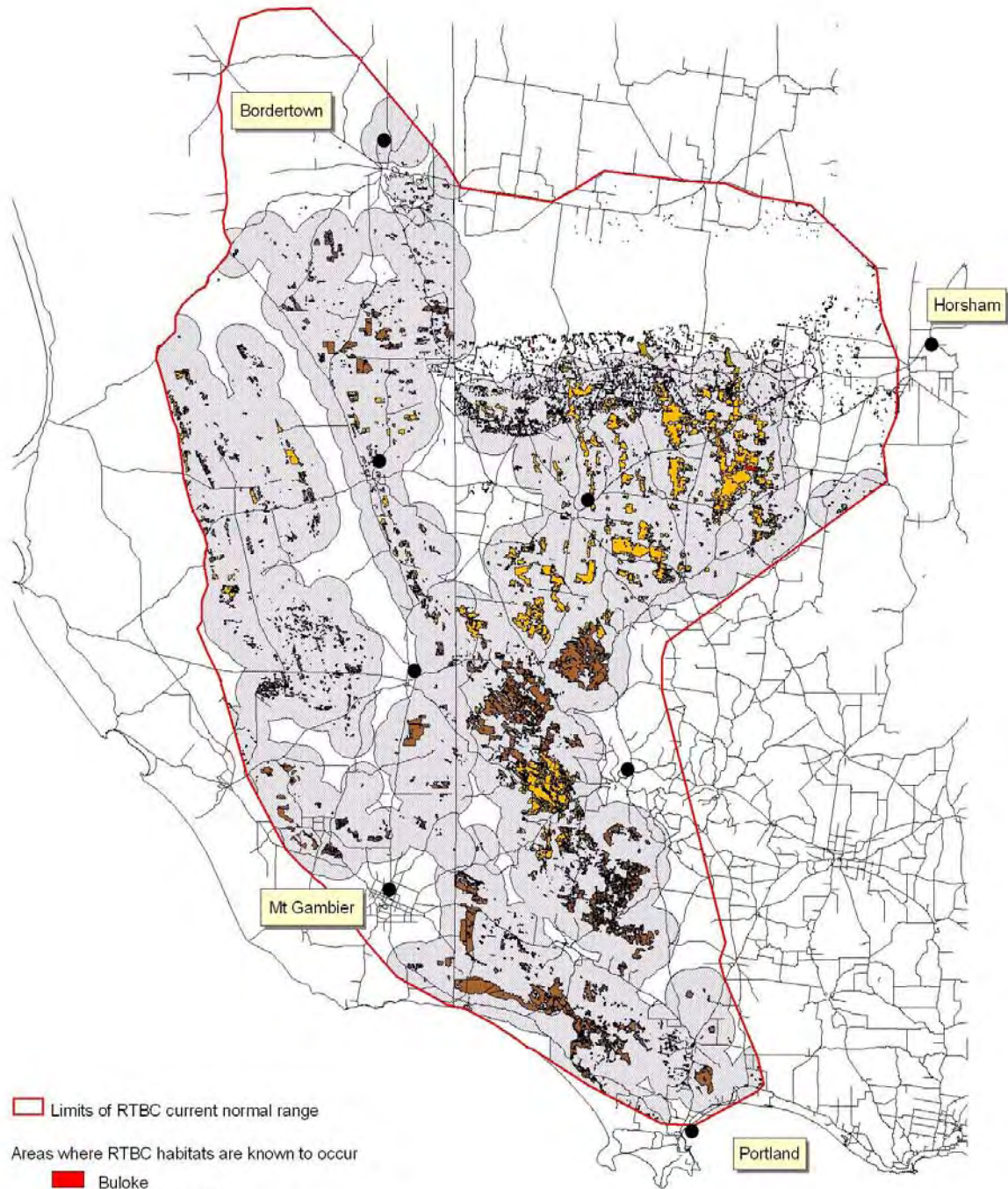
1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non-admission in the pleading.

Date: 19<sup>th</sup> December 2007

*S.J. Court*

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Legal Practitioner representing the Applicant

# ATTACHMENT A



- Limits of RTBC current normal range
  - Areas where RTBC habitats are known to occur
    - Buloke
    - Desert Stringybark
    - Brown Stringybark
    - Desert or Brown Stringybark
  - Areas where RTBC habitats are likely to occur
  - Areas where RTBC habitats may occur
  - Major roads
- 10 0 10 20  
Kilometers

Figure 1: Current normal range and habitats critical for survival of the South-eastern Red-tailed Black-Cockatoo.  
Note that ALL Buloke within the normal range of the RTBC is considered habitat critical for survival.