

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

CA NUMBER: CA2235/07
NUMBERS: AML 207/2006
 ENO 208/2006
TENURE IDENTIFIER: 4761-ASA 2

Appellant: **QUEENSLAND CONSERVATION COUNCIL INC**
 AND
First respondent: **XSTRATA COAL QUEENSLAND PTY LTD, ITOCHU
COAL RESOURCES AUSTRALIA PTY LTD, ICRA NCA
PTY LTD, and SUMISHO COAL AUSTRALIA PTY LTD**
 AND
Second respondent: **ENVIRONMENTAL PROTECTION AGENCY**

NOTICE OF APPEAL
(Form 64, rule 747(1))

To the respondents,
And to the Registrar, Land and Resources Tribunal,

TAKE NOTICE that the appellant appeals to the Court of Appeal against the whole of the order/recommendation of the Land and Resources Tribunal in *Re Xstrata Coal Queensland Pty Ltd & Ors* [2007] QLRT 33, made on 15 February 2007, that:

1. The additional surface area application be granted in whole, without any of the conditions sought by the objectors.
2. The related environmental authority (mining lease) application be granted on the basis of the draft environmental authority for the application, without any of the conditions sought by the objectors.

1. THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE -

Date of Judgment: 15 February 2007 (as amended by Corrigendum, 19 February 2007)

Description of Proceedings: Hearing of an application, and objections thereto, for an additional surface area to a mining lease under section 268 of the *Mineral Resources Act 1989*; heard together with an objections decision hearing under section 220 of the *Environmental Protection Act 1994* for an amendment of an environmental authority

NOTICE OF APPEAL
Filed on behalf of appellant
Form 64 (Version 4), rule 747(1)

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(mining lease) for an open cut coal mine (Tribunal Nos. AML 207/2006 and ENO 208/2006).

Description of parties involved in the proceedings:

Xstrata Coal Queensland Pty Ltd, Itochu Coal Resources Australia Pty Ltd,
ICRA NCA Pty Ltd, and Sumisho Coal Australia Pty Ltd

as applicants

And: Queensland Conservation Council Inc and Mackay Conservation Group Inc

as respondents/objectors

And: Environmental Protection Agency

as Statutory Party

Name of presiding member of the Land and Resources Tribunal: President Koppenol

Location of registry of the Land and Resources Tribunal: Brisbane

2. GROUNDS

1. That the Land Resources Tribunal erred in the construction and application of the requirement to observe natural justice in section 49 of the *Land and Resources Tribunal Act 1999*, by failing to notify the appellant of the Tribunal's preliminary opinions contradictory to that of the expert witnesses who appeared at the hearing upon whom the parties relied, in order to give the appellant the opportunity to present further evidence or make submissions on a matter not already obvious but in fact regarded as important by the Tribunal.
2. That the Land and Resources Tribunal erred in the construction and application of the requirement to observe natural justice in section 49 of the *Land and Resources Tribunal Act 1999*, by refusing to hear or consider closing submissions from counsel for the appellant concerning what conditions were relevant and reasonable to impose based on the evidence presented to the Tribunal and the relevant statutory criteria.
3. That the Land and Resources Tribunal misconstrued the meaning of "the tribunal shall not entertain an objection ... or any ground thereof" in section 268(3) of the *Mineral Resources Act 1989* and thereby wrongly refused to allow the appellant to make submissions on, and failed to properly exercise its discretion to consider, conditions that differed from the condition particularised by the appellant but were otherwise relevant and reasonable based on the evidence presented to the Tribunal and the relevant statutory criteria.
4. That the Land and Resources Tribunal's decision involved an error of law in that the Tribunal misunderstood the effect of particulars of the grounds of objection and, thereby, wrongly refused to allow the appellant to make submissions on, and failed to properly exercise its discretion to consider, conditions that differed from the condition particularised by the appellant but were otherwise relevant and reasonable and which, properly, arose out of the objection and were supported by the evidence presented to the Tribunal and the relevant statutory criteria.

5. That the Land and Resources Tribunal's decision involved an error of law in that the Tribunal exercised its discretions under section 269(3) of the *Mineral Resources Act 1989* and section 222 of the *Environmental Protection Act 1994* on the mistaken basis that it was bound and required to consider only the condition particularised by the appellant and the Tribunal failed to properly exercise its discretions under those sections to recommend conditions that were relevant and reasonable based on the evidence presented to it and the relevant statutory criteria.
6. That the Land and Resources Tribunal's decision involved an error of law in that the Tribunal mistakenly considered the appellant was required to demonstrate a causal link between the mine's greenhouse gas emissions and a discernable environmental impact when considering the matters listed in section 269(4)(j), (k) and (l) of the *Mineral Resources Act 1989* and section 223(c) of the *Environmental Protection Act 1994* and whether to recommend relevant and reasonable conditions be imposed to reduce, avoid, or offset those greenhouse gas emissions.
7. That the Land and Resources Tribunal erred in construing and applying the requirement in section 223(c) of the *Environmental Protection Act 1994* to consider the principles of ecologically sustainable development as set out in the 'National Strategy for Ecologically Sustainable Development', by requiring the appellant to demonstrate a discernable environmental impact or serious environmental degradation when construing and applying the principle "where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation" (commonly known as 'the Precautionary Principle').

3. ORDERS SOUGHT

1. An order that the decision of the Land and Resources Tribunal in *Re Xstrata Coal Queensland Pty Ltd & Ors* [2007] QLRT 33, made on 15 February 2007, be set aside and that the matters in which that decision had been made be remitted to a differently constituted Land and Resources Tribunal to be dealt with according to law.

4-6. LEAVE TO APPEAL

The appeal is made under section 67(2)(b) of the *Land and Resources Tribunal Act 1999* for which leave to appeal is not required.

7. RECORD PREPARATION

I/We undertake to cause a record to be prepared and lodged, and to include all material required to be included in the record under the rules and practice directions and any order or direction in the proceedings.

PARTICULARS OF THE APPELLANT:

Name:	Queensland Conservation Council Inc
Residential or Business Address:	166 Ann Street, Brisbane.
Appellant's solicitor's name:	Anita O'Hart
and firm name:	Environmental Defenders Office (Qld) Inc
Solicitor's Business address:	Level 9, 193 North Quay, Brisbane

Address for service: Level 9, 193 North Quay, Brisbane
 Telephone: (07) 3211 4466
 Fax: (07) 3211 4655
 E-mail address: edoqld@edo.org.au

Signed:
 Description: Solicitor for the appellant
 Dated: 14 March 2007

PARTICULARS OF THE RESPONDENTS:

First respondent's name: Xstrata Coal Queensland Pty Ltd, Itochu Coal Resources Australia Pty Ltd, ICRA NCA Pty Ltd, and Sumisho Coal Australia Pty Ltd
 Residential or business address: Level 10, 123 Eagle Street, Brisbane
 Respondent's solicitor's name: Ben Zillmann
 and firm name: Allens Arthur Robinson
 Solicitor's business address: Level 31, 123 Eagle Street, Brisbane
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 Telephone: (07) 3334 3000
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 E-mail address (if any): Ben.Zillmann@aar.com.au

Second respondent's name: Environmental Protection Agency
 Residential or business address: 160 Ann Street, Brisbane
 Respondent's solicitor's name: N/A
 and firm name: N/A
 Solicitor's business address: N/A
 Address for service: c/- Ian Pepper (Senior Legal Officer)
 Environmental Protection Agency
 Level 11, 160 Ann Street, Brisbane
 Telephone: (07) 3247 5952
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 E-mail address (if any): ian.pepper@epa.qld.gov.au

Signed:
 Description: Solicitor for the appellant
 Dated: 14 March 2007

This Notice of Appeal is to be served on:

First respondent: Xstrata Coal Queensland Pty Ltd & Ors
 c/- Allens Arthur Robinson Solicitors
 Level 31, 123 Eagle Street, Brisbane

Second respondent: Environmental Protection Agency
 c/- Ian Pepper (Senior Legal Officer)
 Level 11, 160 Ann Street, Brisbane