

**LAND APPEAL COURT OF  
QUEENSLAND**



**NOTICE OF APPEAL TO THE LAND APPEAL COURT**

<b>APPELLANT</b>	<b>Friends of the Earth – Brisbane Co-Op Ltd</b>		
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<b>FIRST RESPONDENT</b>	<b>Xstrata Coal Queensland Pty Ltd (ACN 69 098 156 702) AND ICRA Wandoan Pty Ltd (ACN 48 106 260 619) AND Sumisho Coal Australia Pty Ltd (ACN 30 061 524 249)</b>		
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### DECISION APPEALED AGAINST

<b>Date of decision</b>	<b>27 March 2012</b>
<b>Decision</b> State briefly the decision appealed against	Recommendation to approve mining lease and environmental authority made in <i>Xstrata Coal Queensland Pty Ltd &amp; Ors v Friends of the Earth – Brisbane Co-Op Ltd &amp; Department of Environment &amp; Resource Management</i> [2012] QLC 013.

### THIS APPEAL

(If insufficient space please attach separate sheet)

<b>Grounds of appeal</b>	See attached grounds of appeal.
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<b>Orders or other relief sought</b>	<ol style="list-style-type: none"> <li>1. The appeal is allowed.</li> <li>2. The recommendations of the Land Court be substituted by recommendations that the mining lease and environmental authority be refused.</li> </ol> <p>In the alternative to 2,</p> <ol style="list-style-type: none"> <li>3. The matter be remitted to the Land Court to reconsider according to law.</li> </ol>
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<b>Signed</b>	 Environmental Defenders Office (Qld) Inc
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<b>Date</b>	8 May 2012
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**LAND APPEAL COURT OF QUEENSLAND**

No. of 2012

Appellant: **FRIENDS OF THE EARTH - BRISBANE CO-OP LTD  
(QC0239 )**

AND

First respondent: **XSTRATA COAL QUEENSLAND PTY LTD  
(ACN 098 156 702) and Others**

AND

Second respondent: **DEPARTMENT OF ENVIRONMENT AND  
HERITAGE**

**GROUND OFS OF APPEAL**

1. The learned President misconstrued the *Environmental Protection Act 1994* (EPA) in that Her Honour failed to give effect to the expansive definition of “environmental harm” contained in section 14.
  
2. The learned President misconstrued ss. 222 and 223 of the EPA in that Her Honour:
  - (a) Failed to appreciate that the grant of an environmental authority with which the objections decision was concerned gave lawful authorisation to the causation of environmental harm, including serious environmental harm, which was otherwise rendered unlawful by ss. 437, 438 and 493A of the EPA;
  - (b) Failed to appreciate that the likely quantum of environmental harm as defined in s. 14 of the EPA so authorised was relevant to the objections decision; and
  - (c) Failed to appreciate that the criteria specified in paragraph 223(c) of the EPA were required to be considered by reference to the likely quantum of environmental harm as defined in s. 14 of the EPA that would be authorised by the grant of the environmental authority applied for.
  
3. Either as a result of the construction errors referred to in the preceding grounds or otherwise, the learned President excluded from her consideration the environmental harm from the transport and use of coal that would be produced by the conduct of the mining activities that would be authorised by the environmental authority the subject of the objections decision. This was an error of law and fact in that, in light of the express provision of s. 14 of the EPA, the adverse effects of the transport and use of coal that would be produced by the conduct of the mining activities constitute adverse effects and potential adverse effects of those mining activities (whether temporary or permanent and of whatever magnitude, duration or frequency) on environmental values including direct or indirect results and results

from the activity alone or from the combined effects of the activity and other activities or factors. These adverse effects therefore constitute environmental harm authorised by the environmental authority the subject of the objections decision and therefore come within the matters that must be considered for the purpose of making that decision.

4. Either as a result of the construction errors referred to in the preceding grounds or otherwise, the learned President excluded from her consideration the environmental harm that would be caused by the transport and use of the coal produced by the mining activities that would be authorised by the environmental authority the subject of the objections decision in part on the basis of evidence before her that other coal mining operations would cause equivalent harm. Such evidence and the conclusions drawn from such evidence are irrelevant matters that ought not be considered by the learned President or given weight. Inter alia, by considering and giving weight to those matters, the learned President removed from her consideration (or gave zero weight to) the environmental harm caused by the mining activities, a matter that the learned President was bound to consider by the combined effect of ss. 14, 222, 223 and 493A of the EPA.
5. Further and in the alternative to ground 4, by considering and giving weight to the impacts that would arise from notional other mining activities, the learned President misdirected herself in that the objections decision required her to assess the likely environmental harm of the mine the subject of the application and not the likely impacts that might be caused by other notional activities.
6. Further and in the alternative, the learned President misconstrued the Court's jurisdiction as not extending to a consideration of activities which do not fall within the scope of an environmental authority and thereby excluded from consideration the environmental harm caused by the transport and use of the coal produced by the mining activities that would be authorised by the environmental authority the subject of the objections decision. In addition to ss. 14 and 493A of the EPA, the principles of ecologically sustainable development as set out in the 'National Strategy for Ecologically Sustainable Development' and the public interest that Her Honour was required to consider under the standard criteria in s. 223(c) of the EPA allowed the Court to consider the environmental harm from the transport and use of coal that would be produced by the conduct of the mining activities that would be authorised by the environmental authority the subject of the objections decision.
7. Either as a result of the construction errors identified in the preceding grounds or otherwise, the learned President failed to consider the character, resilience and values of the receiving environment for the environmental harm from the transport and use of coal that would be produced by the conduct of the mining activities that would be authorised by the objections decision. Her Honour was required to consider such matters under the standard criteria in s. 223 (c) of the EPA.

8. Either as a result of the construction errors identified in the preceding grounds or otherwise, the learned President failed to consider the duration of the environmental harm from the transport and use of coal that would be produced by the conduct of the mining activities that would be authorised by the objections decision. Her Honour was bound to consider such matters under ss. 14, 17, 223(c) and 493A of the EPA.
  
9. The learned President misconstrued and failed to comply with the duty imposed by s. 5 of the EPA that requires where a function or power is conferred on a person, the person must perform the function or exercise the power in the way that best achieves the object of the Act of ecologically sustainable development. Section 5 imposes a positive duty to use any power or function exercised under the Act to protect the Queensland environment by only allowing activities that are consistent with the object of the EPA. The learned President was bound to recommend refusal of the environmental authority in circumstances where it was not shown that the mine was consistent with the object of the EPA.
  
10. The learned President misconstrued s. 269 (4) (j) of the *Mineral Resources Act 1989* (MRA) in that Her Honour construed the words “any adverse environmental impact of the operation” to exclude from the purview of that phrase those adverse environmental effects of the mining operations the subject of the application of the mining lease which would result from subsequent use and transport of the coal which was extracted during the course of those mining operations.
  
11. The learned President misconstrued s. 269 (4) (k) of the MRA in that Her Honour construed the words “the public right and interest will be prejudiced” to exclude from the purview of that phrase those adverse environmental effects of the mining operations the subject of the application of the mining lease which would result from subsequent use and transport of the coal which was extracted during the course of those mining operations.
  
12. The learned President misconstrued s. 269 (4) (l) of the MRA in that Her Honour construed the words “any good reason has been shown for a refusal to grant the mining lease” to exclude from the purview of that phrase those adverse environmental effects of the mining operations the subject of the application of the mining lease which would result from subsequent use and transport of the coal which was extracted during the course of those mining operations.

**– END OF NOTICE OF APPEAL –**