

NSD 2031 / 2007

IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY

No. NSD / 2007

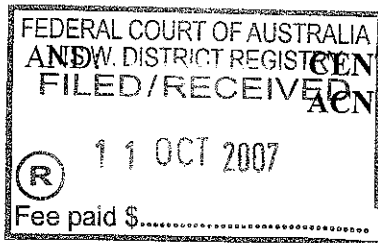
On appeal from a single judge of the Federal Court of Australia.

BETWEEN: **ANVIL HILL PROJECT WATCH ASSOCIATION INC**

Appellant

AND: **MINISTER FOR THE ENVIRONMENT AND WATER  
RESOURCES**

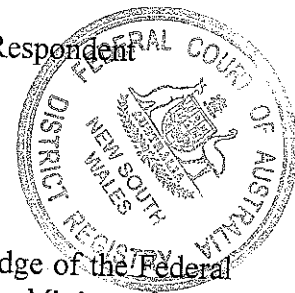
First Respondent



**CENTENNIAL HUNTER PTY LIMITED**  
ACN 101 509 111

Second Respondent

**NOTICE OF APPEAL**  
(Order 52, rule 12)



The appellant appeals from the whole of the judgment of a single judge of the Federal Court, Justice Stone, in *Anvil Hill Project Watch Association Inc v Minister for the Environment and Water Resources & Anor* [2007] FCA 1480, given on 20 September 2007 at Sydney.

**GROUND OFS OF APPEAL:**

1. Her Honour erred in her construction of section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* ("EPBC Act"). Her Honour ought to have held, as a matter of law, the Minister's decision under section 75 involves a jurisdictional fact as to whether a proposed action has, will have or is likely to have a significant impact on a matter protected by Part 3 of the EPBC Act.
2. Her Honour erred in her construction of "listed threatened ecological community" for the purposes of applying sections 18 and 18A of the EPBC Act. Her Honour ought to have held, as a matter of law, a listed threatened ecological community must be interpreted by reference only to its description in the legislative instrument including it in the list established under section 181, considering permissible extrinsic material and preferring a construction that will promote the purpose or object of the EPBC Act. Her Honour erred in holding it was permissible to construe the description of a listed threatened ecological community by reference to non-listed ecological communities described according to a private classification system not contained or referred to in any extrinsic material, to determine whether the listed threatened ecological community is present on a site.

NOTICE OF APPEAL  
Filed on behalf of the appellant  
Form 55, Order 52, rule 12

Environmental Defender's Office (NSW) Ltd  
Level 1, 89 York Street  
Sydney NSW 2000  
Tel: (02) 9262 6989  
Fax: (02) 9262 6998  
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**ORDERS SOUGHT**

The orders sought are that:

1. The appeal be allowed;
2. If the appeal is successful on ground 1 alone, the matter be remitted to Stone J to determine whether, as a question of fact, the proposed action has, will have or is likely to have a significant impact on a matter protected by Part 3 of the EPBC Act;
3. In the alternative to Order 2, if the appeal is successful on ground 2, whether or not the appeal is also successful on ground 1, the decision of the first respondent's delegate under section 75 of the EPBC Act on 19 February 2007, that the proposed action by the second respondent to construct and operate an open cut coal mine and ancillary facilities, known as the Anvil Hill Project (EPBC Referral No. 2007/3228), is not a controlled action, be set aside and remitted to the first respondent or a duly appointed delegate to be reconsidered according to law;
4. Costs.

**NOTICE TO RESPONDENTS**

To the first respondent of Parliament House, Canberra in the Australian Capital Territory, c/- Australian Government Solicitor, Level 42, 19 Martin Place, Sydney in the State of New South Wales:

And to the second respondent of Level 18, BT Tower, 1 Market Street, Sydney in the State of New South Wales, c/- Blake Dawson Waldron Lawyers, 225 George Street, Sydney in the State of New South Wales:

**TAKE NOTICE:**

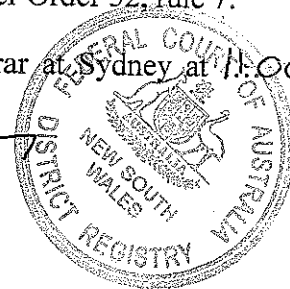
(a) Before taking any step in the proceeding you must enter an appearance in the Registry, unless you have already entered an appearance under Order 52, rule 7.

(b) The papers in the appeal will be settled before the Registrar at Sydney at 11:00 am on ~~Thursday~~ *Thursday*..... 2007.

11 OCT 2007

The appellant's address for service is:

c/- Ian Ratcliff (Solicitor)  
 Environmental Defenders Office (NSW) Ltd  
 Level 1, 89 York Street  
 Sydney NSW 2000  
 Tel: (02) 9262 6989  
 Fax: (02) 9262 6998  
 Email: ian.ratcliff@edo.org.au



Date: 11 October 2007

*Kirsty Ruddock*  
 Kirsty Ruddock  
 Environmental Defender's Office NSW Ltd  
 Solicitor for the Appellant