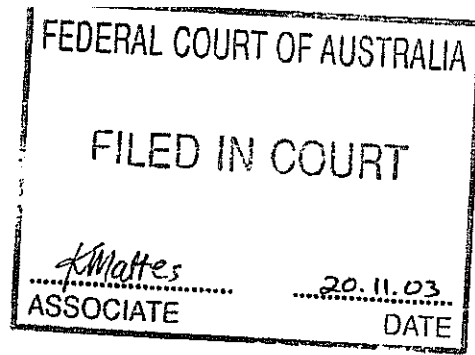


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IN THE FEDERAL COURT OF AUSTRALIA )  
NEW SOUTH WALES DISTRICT REGISTRY )

No. N 914 of 2003

BETWEEN

MINISTER FOR THE ENVIRONMENT  
AND HERITAGE  
Applicant

AND

RONALD GREENTREE  
First Respondent

MERRYWINEBONE PTY LTD  
Third Respondent

ADAM NORRIE  
Fourth Respondent

AMY MAREE GREENTREE  
Fifth Respondent

KENNETH BRUCE HARRIS  
Sixth Respondent

ROBERT HAROLD HARRIS  
Seventh Respondent

AUEN GRAIN PTY LTD  
Eighth Respondent

FURTHER AMENDED APPLICATION

(Pursuant to an order made by Justice Sackville on 9 October 2003.)

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This is an application for:

1) Injunctions and orders to repair and mitigate damage under s 475 of the **Environment Protection and Biodiversity Conservation Act 1999** (Cth).

2) Pecuniary penalties under s 481 of the **Environment Protection and Biodiversity Conservation Act 1999** (Cth)

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The Court has jurisdiction under both the **Environment Protection and Biodiversity Conservation Act 1999** and under s 39B(1A)(c) of the **Judiciary Act 1903** (Cth) to hear and determine the application and to make the orders sought.

The Applicant has standing to seek the injunctions under s 475(1) and the pecuniary penalties under s 481(1) of the **Environment Protection and Biodiversity Conservation Act 1999**.

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AUSTRALIAN GOVERNMENT SOLICITOR  
Piccadilly of Sydney  
133 Castlereagh Street  
SYDNEY NSW 2000  
G.P.O. Box 2727 SYDNEY 2001  
DX 444 SYDNEY

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Stephen Vorreiter  
Reference: 03029273  
Telephone: (02) 9581 7435  
Facsimile: (02) 9581 7559

On the grounds specified below, the Applicant seeks orders in the following terms:

1. Each of the Respondents is restrained from engaging in the following conduct, either directly, or through his, her or its agents or servants:

- a) land clearing, ploughing or cropping activities (including the planting of seeds), and any other activities disturbing or otherwise affecting the soil inside and up to 40 metres outside of that portion of the declared Ramsar wetlands known as Gwydir Wetlands (a photograph depicting the boundaries of which portion is attached to these orders) which is located within two lots of the property known as "Windella", in particular Lot 8 in DP 750461 in the Parish of Dundunga and Lot 9 in DP 750444 in the Parish of Collyu, County of Benarba, Local Government Area of Moree Plains (this portion of the Gwydir Wetlands is referred to as "the Windella component of the Gwydir Wetlands");
- b) land clearing, ploughing or cropping activities (including the planting of seeds), and any other activities disturbing or otherwise affecting the soil within 40 metres on either side of the entire length of the watercourse on the property known as "Windella" in and leading into the Windella component of the Gwydir Wetlands;
- c) any work designed to alter, or which is reasonably likely to have the effect of altering, the flow regime of waters into and out of the Windella component of the Gwydir Wetlands.

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2. The nominated Respondents undertake the following repair measures:

- a) The First, Third and Eighth Respondents fence within 28 days the perimeter of the Windella component of the Gwydir wetlands to an extent and in a manner effective to prevent the entry of vehicles, farm machinery and or domestic or grazing stock.
- b) Upon completion of the fencing set out above all of the Respondents thereafter maintain the fence and not permit access within the perimeter by vehicles, farm machinery and or domestic or grazing stock.
- c) Within 14 days the First, Third and Eighth Respondents install a pipe and control gate in the stock and domestic channel at the western end of the Windella component of the Gwydir Wetlands, in accordance with the statutory requirements of the Rivers and Foreshores Improvement Act 1948 (NSW) and to the reasonable satisfaction of the New South Wales Department of Infrastructure, Planning, and Natural Resources, such pipe and control gate to be flanked by low earth wing banks adequate to enable the gate to be operated for the inundation of the said component of the wetlands without significant loss of water into adjoining cultivated lands.
- d) During April 2004 the First, Third and Eighth Respondents by themselves, their servants and agents plant Coolibah trees (*Eucalyptus coolabah*) as follows:

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- 50 trees in approximately the locations of those that were removed during the period October 2002 and July 2003, between the existing corridor of trees and the dam, and
- 100 trees at other elevated locations in the said component of the wetlands.

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e) The First, Third and Eighth Respondents by themselves their servants and agents make all reasonable endeavours, to consult with the Department of Infrastructure Planning and Natural Resources and in accordance with the Water Act 1912 (NSW) to procure at the expense and cost of the said Respondents the release during Spring/Summer 2003 or Spring/summer 2004, of water sufficient to inundate the said component of the wetlands according to the following regime:

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- Not less than 500 megalitres by way of initial inundation, and
- Not less than 200 megalitres in the month following the initial inundation at a rate sufficient to maintain continuous inundation for the whole of that month.

- f) The First, Third and Eighth Respondents are to appoint an expert with relevant qualifications in ecology or botany, at the said Respondents' expense and as approved by the Applicant, to oversee the carrying out and completion of the rehabilitation measures referred to in orders 2(a) to (d) above.
- g) At the expiration of 6 months from the date of this order and every 6 months thereafter for a period of 2 years, the expert referred to in order 2(f) above shall, at the First, Third and Eighth Respondents' expense, provide to the First, Third and Eighth Respondents and to the Applicant a report of the expert's review and assessment of the success of the rehabilitation measures referred to in orders 2(a) to (d) above.
- h) The fifth, sixth and seventh Respondents give all necessary consents for access to the said component of the wetland and to surrounding land by the other Respondents and the expert referred to in order 2.(f) to facilitate the fulfilment of these orders by all Respondents.
- i) The fifth, sixth and seventh Respondents take all reasonable steps to prevent the First, Third and Eight Respondents from further harming the ecological character of the Windella component of the Gwydir wetlands.

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3. The First, Third, and Eighth Respondents pay a pecuniary penalty for breaching s 16 of the **Environment Protection and Biodiversity Conservation Act 1999** (Cth).
4. Costs.
5. Such further orders as the Court considers appropriate.

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The grounds of the application are:

1. Conduct of the kind which is sought to be restrained has had or will have a significant impact on the ecological character of the Gwydir Wetlands in contravention of s 16(1)(a) of **Environment Protection and Biodiversity Conservation Act 1999**.
2. Conduct of the kind which is sought to be restrained is likely to have a significant impact on the ecological character of the Gwydir Wetlands in contravention of s 16(1)(b) of **Environment Protection and Biodiversity Conservation Act 1999**.
3. Each of the respondents has engaged, engages or proposes to engage in the conduct sought to be restrained and such conduct has constituted, is constituting or will constitute a contravention of the **Environment Protection and Biodiversity Conservation Act 1999**.
4. The First, Third, and Eighth Respondents have engaged in conduct that constitutes a contravention of section 16 of the **Environment Protection and Biodiversity Conservation Act 1999**.

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Date: November 2003

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Stephen Vorreiter  
A solicitor employed by the Australian Government Solicitor  
Solicitor for the Applicant

#### NOTICE TO THE RESPONDENTS

To the First Respondent

**RONALD GREENTREE**  
"Oreel"  
Rowena NSW 2387

To the Third Respondent

**MERRYWINEBONE PTY LTD**  
43 Auburn Street  
Moree. NSW 2400

To the Fourth Respondent

**ADAM NORRIE**  
Yarrowa Homestead  
Yarrowa via Moree NSW 2400

To the Fifth Respondent

**AMY MAREE GREENTREE**  
Lyndon Hill  
905 Mitchell Highway  
Orange NSW 2800

To the Sixth Respondent

**KENNETH BRUCE HARRIS**  
"Oreel"  
Rowena NSW 2387

To the Seventh Respondent

**ROBERT HAROLD HARRIS**  
"Myralaga"  
Rowena NSW 2387

To the Eighth Respondent

**AUEN GRAIN PTY LTD**  
43 Auburn Street  
Moree NSW 2400

If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified below, the application may be dealt with and you will be liable to suffer judgment or an order against you in your absence.

Before any attendance at Court, you must file an appearance in the Registry.

*Appointment for directions hearing:*

Time:

Place:           The Federal Court of Australia  
                    Law Courts Building  
                    Queens Square  
                    SYDNEY NSW 2000

Date:

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Registrar

The Applicant's address for service is:

Australian Government Solicitor  
Piccadilly of Sydney

133 Castlereagh Street  
Sydney NSW 2000  
GPO Box 2727 Sydney 2001  
DX 444 Sydney