

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/01/2015 9:42:00 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged: Originating Application for Judicial Review - Form 66 - Rule 31.01(1)
File Number: NSD33/2015
File Title: Mackay Conservation Group Incorporation Number: IA03355 (Incorporated pursuant to the Associations Incorporation Act 1981 (Qld)) v The Commonwealth of Australia & Ors
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: First Directions
Time and date for hearing: 02/02/2015, 9:30 AM
Place: Court Room Not Assigned, Level 17 Law Courts Building Queen's Square, Sydney



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 13/01/2015 10:50:43 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Admin
Law
12.15

Originating application for judicial review



No.

Federal Court of Australia
District Registry: New South Wales
Division: General Division

Mackay Conservation Group Incorporation Number: IA03355 (Incorporated pursuant to the Associations Incorporation Act 1981 (Qld))

Applicant

The Commonwealth of Australia

First Respondent

Minister for the Environment

Second Respondent

Adani Mining Pty Ltd ABN 27 145 455 205

Third Respondent

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to _____.

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Mackay Conservation Group Inc (Applicant)
Prepared by (name of person/lawyer) Sarah Roebuck
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The Applicant applies to the Court under section 5(1) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR Act**) and/or and section 39B(1A) of the *Judiciary Act 1903* (Cth) for an order of review of the purported decision of the Second Respondent (the **Minister**) made on 24 July 2014 (the **Decision**) pursuant to sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) to approve a proposed action to develop an open cut and underground coal mine, 189 km rail link and associated infrastructure approximately 160 km north west of Clermont in central Queensland (the **Project**) (being a “controlled action” within the meaning of section 67 of the EPBC Act), subject to certain conditions imposed pursuant to section 134 of the EPBC Act (the **Conditions**).

Details of claim

The Applicant is taken to be a person aggrieved by the whole of the Decision by section 487(3) of the EPBC Act because:

1. The Applicant is incorporated in, or otherwise established in, Australia;
2. In the two years immediately before the Decision was made, the Applicant had engaged in a series of activities in Australia for protection or conservation of, or research into, the environment, and it still does today;
3. At the time of the Decision, the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment; and
4. The Applicant is aggrieved by the Decision because it is wrong in that it was unlawfully made.

Grounds of application

1. The Decision involved an improper exercise of power (within the meaning of sections 5(1)(e) and 5(2)(b) of the ADJR Act) conferred by sections 130(1), 133 and 134 of the EPBC Act or, alternatively, the Minister fell into jurisdictional error, because he failed to take into account mandatory relevant considerations in the making of his decision that were required to be taken into account by sections 136 and 527E of the EPBC Act, namely:
 - a. Matters relevant to the following matters protected by a provision of Part 3 of the EPBC Act, being the impact of the Project on:
 - i. the world heritage values of the Great Barrier Reef World Heritage Area (**GBHRWA**) (being a declared World Heritage property);
 - ii. the National Heritage values of the Great Barrier Reef National Heritage Place (being a National Heritage place); and



iii. the environment in the Great Barrier Reef Marine Park,

in that, in making the Decision, the Minister was obliged to consider and he failed to consider or take into account the emission of greenhouse gases contributing to climate change from the burning of the coal that was to be mined from the Project;

b. The Minister was obliged to consider and he failed to consider “*economic and social matters*” as was provided for in section 136(1)(b) of the EPBC Act in that he failed to consider or take into account the emission of greenhouse gases contributing to climate change from the burning of the coal that was to be mined from the Project;

(together, “**Relevant Considerations**”).

c. The Minister was obliged to consider and he failed to consider factors to be taken into account when considering the matters in section 136(1), being:

i. the principles of ecologically sustainable development as required by section 136(2)(a) in that he failed to consider or take into account the emission of greenhouse gases contributing to climate change from the burning of the coal that was to be mined from the Project;

ii. information he had on the relevant impacts of the action within the meaning of sections 136(2)(e) and 527E of the EPBC Act in that he failed to consider or take into account the submissions concerning climate change that were before him and, in particular, the Applicant’s submission concerning the emission of greenhouse gases contributing to climate change from the burning of the coal that was to be mined from the Project;

(together, the “**Relevant Factors**”).

2. The Decision is thereby invalid.
3. Alternatively, the Minister failed to give proper, genuine and realistic consideration to the matters he was obliged to consider, namely, the Relevant Considerations and the Relevant Factors, and the Decision is thereby invalid.
4. The Decision involved an error of law, within the meaning of section 5(1)(f) of the ADJR Act and/or a jurisdictional error in that the Minister failed to lawfully or properly construe the nature of the Project’s “*impact*”, as that word is defined in section 527E of the EPBC Act. The Minister was required to consider and apply this when exercising his power to



approve the Project pursuant to sections 130(1) and 133. The First Respondent wrongly construed the EPBC Act as only requiring him to consider matters concerning:

- a. the direct greenhouse gas emissions of the Project itself; and
- b. the direct greenhouse gas emissions resulting from energy required to undertake the Project;

and as not requiring him to consider the emission of greenhouse gases contributing to climate change from the burning of the coal mined from the Project. The Minister accordingly, failed to consider these emissions in making his Decision.

5. Accordingly, the Decision is invalid.

Orders sought

1. An order or writ quashing or setting aside the Decision.
2. Alternatively, a declaration to effect that the Decision is void and of no effect and/or was made unlawfully.
3. If necessary, a writ or order in the nature of prohibition and/or an injunction prohibiting or restraining the Third Respondent from undertaking the Controlled Action or otherwise doing any act or thing pursuant to the Decision until the final determination of these proceedings.
4. Costs.
5. Such further or other orders as this Court thinks just.

Applicant's address

The Applicant's address for service is:

Place: Sarah Roebuck, Environmental Defender's Office (NSW) Inc, Level 5, 263 Clarence Street, Sydney NSW 2000

Email: sarah.roebuck@edonsw.org.au

The Applicant's address is Environment Centre, 156 Wood St, Mackay QLD 4740.



Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 12 January 2015

A handwritten signature in blue ink, appearing to read "S. Roebuck".

Signed by Sarah Roebuck
Lawyer for the Applicant