

ORIGINAL

Form 55

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY

NSD 1591 / 2004

No. of 2004

On appeal from Justice Sackville of the Federal Court of Australia

BETWEEN:

FEDERAL COURT OF AUSTRALIA
N.S.W. DISTRICT REGISTRY
FILED / RECEIVED
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3 NOV 2004
Fee paid \$..... 2422

RONALD GREENTREE
First Appellant

AUEN GRAIN PTY LIMITED
Second Appellant

**MINISTER FOR THE
ENVIRONMENT AND HERITAGE**
Respondent

NOTICE OF APPEAL
(Order 52 rule 12)



1. The First and Second Appellants appeal from the whole of the judgment of His Honour Justice Sackville given on 14 October 2004 at Sydney.

GROUNDS:

2. His Honour erred in:
 - (a) holding that the Windella Ramsar Site was a part of a wetland designated by the Commonwealth under Article 2 of the Ramsar Convention within the meaning of s. 17(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the "Act");

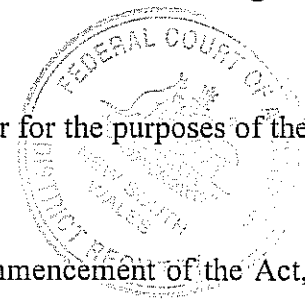
Filed on behalf of the First and Second Appellants by:



PricewaterhouseCoopers Legal
Lawyers
Level 1, Darling Park Tower 2
201 Sussex Street
SYDNEY 2000
DX 254 SYDNEY

Contact: Andrew Petersen
Tel: (02) 8266 6666
Fax: (02) 8266 6999
Ref: Andrew Petersen

- (b) finding that the RIS (Information Sheet on Ramsar Wetlands) accompanying the Minister's letter of 2 June 1999 and the accompanying maps and other information and material supplied by the Minister, was sufficient for the Ramsar Windella site to be 'designated by the Commonwealth under Article 2 of the *Ramsar Convention* for inclusion in the List' within the meaning of s. 17(1) of the Act;
- (c) holding that the Commonwealth may designate a wetland or part of a wetland within the meaning of s. 17(1) of the Act without describing the boundaries of the site precisely or delimiting the boundaries on a map;
- (d) finding that each Appellant took action that had a significant impact on the ecological character of the Windella Ramsar Site within the meaning of s. 16(1) of the Act;
- (e) having found that there was no indigenous groundcover for the purposes of the *Native Vegetation Conservation Act 1997 (NSW)*:
 - (i) failing to find that immediately before the commencement of the Act, no further environmental authorisation was necessary to allow the action taken by the Appellants to be taken lawfully, within the meaning of s. 43A of the Act;
 - (ii) finding that the effect of the action taken by the Appellants had "a significant impact on the ecological character" of the site;
- (f) ordering that each Appellant pay the Commonwealth a pecuniary penalty, either at all or in the amounts ordered.



ORDERS SOUGHT:

- 3. The First and Second Appellants seek orders that:
 - (a) the appeal be allowed;
 - (b) the orders of the primary judge be set aside;
 - (c) in lieu of the orders of the primary judge it be ordered that the Respondent's Application against the First Appellant and against the Second Appellant be dismissed with costs;

- (d) the Respondent pay the First and Second Appellants' costs of the appeal;
- (e) such further or other orders as the Court thinks fit.

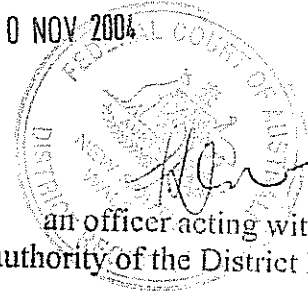
To the Respondent:

Minister for the Environment and Heritage
Suite MG61
Parliament House
Canberra ACT 2600

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 pursuant to Order 52, rule 7.
- (b) The papers in the appeal will be settled before the Registrar at the Sydney Registry on: *11:00 am Tuesday,*

30 NOV 2004

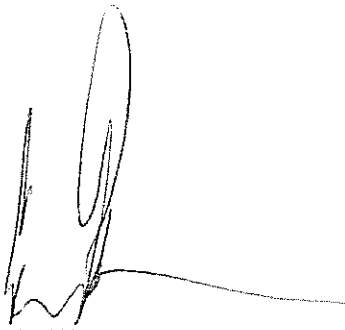


an officer acting with the authority of the District Registrar

The Appellants' address for service is:

PricewaterhouseCoopers Legal
Level 10, Tower 2
Darling Park
201 Sussex St
SYDNEY 2001

Date: *3 NOVEMBER*.....2004


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Andrew Petersen
Solicitor for the Appellants