

BETWEEN: **WILDLIFE PRESERVATION SOCIETY OF QUEENSLAND
PROSERPINE/WHITSUNDAY BRANCH INC**

Applicant

AND: **MINISTER FOR THE ENVIRONMENT AND HERITAGE**

Respondent

APPLICATION FOR AN ORDER OF REVIEW

Application for an order of review of two decisions made under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (“**EPBC Act**”) by a delegate of the respondent:

1. On 6 May 2005, that the proposal by Bowen Central Coal Management Pty Ltd to construct and operate an open cut coal mine, the Isaac Plains Coal Project, northeast of Moranbah, Queensland (EPBC Referral No. 2005/2070), is not a controlled action; and
2. On 10 May 2005, that the proposal by QCoal Pty Ltd to construct and operate an open cut coal mine, the Sonoma Coal Project near Collinsville, central Queensland (EPBC Referral No. 2005/2080), is not a controlled action.

The applicant is a person who is aggrieved by the decisions, pursuant to the widened standing provided by section 487 of the EPBC Act, because –

1. The applicant is incorporated in Australia.
2. During the 2 years immediately before the decisions the applicant has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment.
3. At the time of the decisions the objects or purposes of the applicant included the protection or conservation of, or research into, the environment.

APPLICATION FOR AN ORDER
OF REVIEW
Filed on behalf of the applicant
Form 56, Order 54

Environmental Defender’s Office of
Northern Queensland Inc
First Floor, 96-98 Lake Street
CAIRNS QLD 4870
Telephone (07) 4031 4766
Facsimile (07) 4041 4535
Email: edonq@edo.org.au

The grounds of the application are –

1. Under sections 5(1)(e) and 5(2)(b) of the *Administrative Decisions (Judicial Review) Act 1977*, that the making of the decisions were an improper exercise of the power conferred by section 75 of the EPBC Act because the delegate failed to take a relevant consideration into account in the exercise of the power, namely, the adverse impacts the Isaac Plains Coal Project and the Sonoma Coal Project are likely to have on the matters protected by Part 3 of the EPBC Act due to the burning of the coal from the mines in coal-fired power stations emitting a large amount of greenhouse gases contributing to global warming.
2. Under section 5(1)(f) of the *Administrative Decisions (Judicial Review) Act 1977*, that the decisions involved an error of law, namely, the delegate misconstrued the meaning of “all adverse impacts the action is likely to have on the matter protected by each provision of Part 3”, in section 75(2) of the EPBC Act, as not including the adverse impacts the Isaac Plains Coal Project and the Sonoma Coal Project are likely to have on the matters protected by Part 3 of the EPBC Act due to the burning of the coal from the mines in coal-fired power stations emitting a large amount of greenhouse gases contributing to global warming.

The applicant claims –

1. An order setting aside the decision of the delegate of the respondent, on 6 May 2005, that the proposal by Bowen Central Coal Management Pty Ltd to construct and operate an open cut coal mine, the Isaac Plains Coal Project, northeast of Moranbah, Queensland (EPBC Referral No. 2005/2070), is not a controlled action.
2. An order setting aside the decision of the delegate of the respondent, on 10 May 2005, that the proposal by QCoal Pty Ltd to construct and operate an open cut coal mine, the Sonoma Coal Project near Collinsville, central Queensland (EPBC Referral No. 2005/2080), is not a controlled action.
3. An order remitting the decisions referred to in orders 1 and 2 to the respondent (or a duly appointed delegate of the respondent) for further consideration and decision.
4. An order that the respondent pay the applicant’s costs of the application.

This application was prepared by Stephen Keim SC and Chris McGrath of counsel.

Date: 20 July 2005

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Kirsty Ruddock
Solicitor for the applicant

NOTICE TO THE RESPONDENT

To the respondent of Parliament House in the Australian Capital Territory, c/- Australian Government Department of the Environment and Heritage, John Gorton Building, King Edward Terrace, Parkes in the Australian Capital Territory:

This application has been set down for the time and place stated below. If you or your legal representative do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interlocutory relief may be heard.

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

Time and date of hearing: 19 August 2005 at 10.15am (for directions only).

Place: Level 7
Federal Court of Australia
Commonwealth Law Courts Building
North Quay, Brisbane

Date: 22 July 2005

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Registrar

The applicant's address for service is:

c/- Kirsty Ruddock
Principal Solicitor
Environmental Defender's Office of Northern Queensland Inc
First Floor, 96-98 Lake Street
CAIRNS QLD 4870
Telephone (07) 4031 4766
Facsimile (07) 4041 4535
Email: edonq@edo.org.au

In addition to the respondent, the applicant will serve this application on the following entities:

Bowen Central Coal Management Pty Ltd
Attention: Julian Hoskin
GPO Box 731
BRISBANE Q 4001

QCoal Pty Ltd
Attention: Mr Chris Wallin (Managing Director)
1095 Waterworks Road
THE GAP QLD 4061

The State of Queensland
c/- Crown Law
State Law Building
50 Ann Street
BRISBANE QLD 4001