

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application for Judicial Review - Form 66 - Rule 31.01(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: NSD711/2024
File Title: HUNTER ENVIRONMENT LOBBY INC (Y2164435) v MINISTER FOR ENVIRONMENT AND WATER & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.

Originating application for judicial review

No. of 20

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

Hunter Environment Lobby Inc (Y2164435)

Applicant

Minister for the Environment and Water and another
First 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: [Registry will insert time and date]

Place: [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

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

Filed on behalf of (name & role of party) Hunter Environment Lobby Inc, Applicant

Prepared by (name of person/lawyer) Kirsty Ruddock

Law firm (if applicable) Environmental Defenders Office Ltd

Tel 1800 626 239 Fax N/A

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Address for service Suite 8.02 Level 8/6 O'Connell St, Sydney NSW 2000
(include state and postcode)



The Applicant applies to the Court to review:

1. the decision of the delegate of the First Respondent that the proposed action by the Second Respondent to expand the existing Hunter Valley Operations North open-cut coal mine at Lemington Road, Liddell, New South Wales, including additional infrastructure upgrades and progressive rehabilitation, and to extend the mine life from 2025 to the end of 2050 (EPBC 2023/09651) is a controlled action under s 75 of the *Environment Protection and Biodiversity Act 1999* (Cth) (**EPBC Act**) for which the controlling provisions are ss 18, 18A, 24D and 24E of the EPBC Act; and
2. the decision of the delegate of the First Respondent that the proposed action by the Second Respondent to expand the existing Hunter Valley Operations South open-cut coal mine at Lemington Road, Liddell, New South Wales, including additional infrastructure upgrades and progressive rehabilitation, and to extend the mine life from 2025 to the end of 2050 (EPBC 2023/09652) is a controlled action under s 75 of the EPBC Act for which the controlling provisions are ss 18, 18A, 24D and 24E of the EPBC Act.

Details of claim

The Applicant is aggrieved by the decisions because:

1. The Second Respondent proposes to expand the existing Hunter Valley Operations North open-cut coal mine and the Hunter Valley Operations South open-cut coal mine (**proposed actions**).
2. On 15 September 2023, the proposed actions were referred for a decision under ss 75 and 87 of the EPBC Act as to the assessment approach and applicable controlling provisions.
3. On 26 November 2023, the Applicant lodged a submission in relation to the referral.
4. On 29 November 2023, Lock the Gate Alliance Ltd (**Lock the Gate**) lodged a submission in relation to the referral.
5. On 13 December 2023, a delegate of the First Respondent decided, under s 75 of the EPBC Act, that the proposed actions were controlled actions for which the controlling provisions are ss 18, 18A, 24D and 24E of the EPBC Act.
6. On 30 April 2024, the Applicant received the statement of reasons in respect of each decision.
7. The Applicant has standing to bring an application under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) to review the decisions of the delegate by reason of s 487(3) of the EPBC Act.

Grounds of application

1. The delegate failed to consider or address the substance of the applicant's submission dated 26 November 2023 and Lock the Gate's submission dated 29 November 2023, as to the adverse impact on Matters of National Environmental Significance (**MNES**) of up to 1.2 gigatonnes of greenhouse gases including specifically the submissions as to the adverse impact on the Great Barrier Reef Marine Park, and thereby:
 - a. failed to "consider the comments" received from the Applicant and Lock the Gate in relation to the impact of the proposed actions on MNES and specifically the Great Barrier Reef as required by s 75(1A) of the EPBC Act; and
 - b. constructively failed to exercise jurisdiction.

This was a jurisdictional error and an error under s 5(1)(b), (d), (e) (read with (2)(b)), and/or (f) of the ADJR Act.

Orders sought

1. An order of certiorari to quash the purported decisions made by the delegate of the First Respondent on 13 December 2023.
2. An order of mandamus compelling the First Respondent to remake the decisions according to law.
3. In the alternative to (1) and (2), orders under s 16(1) of the ADJR Act in equivalent terms.
4. Costs.

Applicant's address

The Applicant's address for service is:

Place: Suite 8.02 Level 8/6 O'Connell St, Sydney NSW 2000

Email: Kirsty.ruddock@edo.org.au

The Applicant's address is 202 High Street, East Maitland NSW 2323



Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 27 May 2024

A handwritten signature in black ink, appearing to be "K. Ruddock".

Signed by Kirsty Ruddock, Environmental Defenders Office
Lawyer for the Applicant



Schedule

No. of 20

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

Respondents

Second Respondent: HV Operations Pty Ltd ACN 606 478 399

Date: 27 May 2024