

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY

No. NSD of 2007

BETWEEN: **ANVIL HILL PROJECT WATCH ASSOCIATION INC**
Applicant

AND: **MINISTER FOR THE ENVIRONMENT AND WATER
RESOURCES**
First Respondent

AND: **CENTENNIAL HUNTER PTY LIMITED
ACN 101 509 111**
Second Respondent

AFFIDAVIT
(Form 20)
(Order 14 rule 2)

On 16 May 2007, I, Christine May Phelps of Lot 12, Wybong Hall Road, Wybong, in the State of New South Wales, say on oath –

1. I am the President of the Anvil Hill Project Watch Association Inc (“**AHPWA**”) and have been since its incorporation in 2000. I am authorised to prepare this affidavit on its behalf.

Standing to apply for judicial review

2. AHPWA was incorporated in Australia in June 2000. Annexure **CMP-1** to this affidavit is a true copy of the Certificate of Incorporation of AHPWA.
3. The objects of AHPWA were set at its annual general meeting in 2003. Annexure **CMP-2** to this affidavit is a true copy of the minutes of the 2003 annual general meeting of AHPWA. Its objects are “to protect environmental interests [and] to protect community interests”.
4. AHPWA uses the Model Rules for the Incorporation of Associations as its constitution.
5. Since its incorporation, including in the last 2 years, AHPWA has engaged through its executive and members in a series of activities in Australia for protection or conservation of, or research into, the environment. These activities have included:

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Deponent

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Solicitor

AFFIDAVIT OF CHRISTINE MAY
PHELPS
Filed on behalf of the applicant
Form 20 (Order 14, rule 2)

Environmental Defenders Office (NSW) Ltd
Level 1, 89 York Street
Sydney NSW 2000
Tel: (02) 9262 6989
Fax: (02) 9262 6998
Email: edonsw@edo.org.au

- (a) active involvement in the Hunter Regional Landcare activities, which has included:
 - (i) tree planting on the banks of the Hunter River as part of the Hunter River Rehabilitation Project 2005; and
 - (ii) collecting and sampling water from various points in the Wybong Catchment to establish stream and groundwater flows, salinity and turbidity as part of the WaterWatch program in 2006. I understand that this information is used in long-term water management plans for the Wybong Catchment;
 - (b) nomination of species under the *Threatened Species Conservation Act 1995* (NSW) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) for determination as threatened species, including *Pomaderris reperta*, *Commersonia rosea* and *Oligochaetochilus (Pterostylis) sp. aff. Praetermissus* in 2005;
 - (c) education of community and local government groups by running workshops and field days from 2004 to the present on topics such as: threatened species; insect eaters; birds and bats and their values to agriculture; biodiversity values of Wybong; control of tiger and prickly pear; survey techniques; and flora identification;
 - (d) challenging Muswellbrook Shire Council on its assessment methodology in relation to a development application for a bulk coal sample at Anvil Hill in 2003;
 - (e) making detailed submissions and appearing at the Independent Hearing and Assessment Panel to speak against the proposed Anvil Hill open cut mine from October 2006 to February 2007, in particular making written submissions dated 6 October 2006, 13 October 2006, 16 October 2006, 10 November 2006, 14 November 2006, 30 November 2006, 8 December 2006, 23 December 2006, 8 January 2007, and 19 February 2007 to the Department of Planning against the proposed Anvil Hill open cut mine;
 - (f) making detailed submissions to the then Australian Government Department of the Environment and Heritage on the referral of the Anvil Hill Project under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) on 25 January 2007 and 30 January 2007; and
 - (g) holding approximately 10 open public meetings about the proposed open cut Anvil Hill mine since incorporation in 2000 to the present time.
6. In addition to the water sampling noted above, since its incorporation, AHPWA has sought to assist with research into the environment in the Wybong area through its executive and members. These activities have included:

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Deponent

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Solicitor

- (a) involvement in a project funded by the Envirofund, a Commonwealth fund for community groups and government bodies to do works to protect the environment, to identify, preserve and protect the flora, fauna and Aboriginal heritage values of Wybong from 2004 to 2006;
- (b) assisting the Hunter Bird Observers Club in recording migratory and native bird species for the Australian Bird Atlas in the Wybong area from 2002 to the present, a project funded by the Australian Government Department of the Environment and Water Resources;
- (c) carrying out fauna and flora surveys of the Wybong area from 2003 to the present which have resulted in:
 - (i) discovery of a new orchid species, and new populations of endangered flora species;
 - (ii) extension of the known range for a number of species; and
 - (iii) updating NSW Atlas records for fauna and flora;
- (d) currently writing and collating a book on the native species of Wybong funded by the Hunter Regional Landcare Network; and
- (e) assisting ecologists and archaeologists as field support staff in surveys to identify flora and fauna and Aboriginal artefacts for comprehensive reports in the Wybong area, particularly the Anvil Hill area, from 2003 to the present.

Compliance with the time limits for seeking judicial review

7. AHPWA is applying for an order of review against a decision of a delegate of the first respondent made on 19 February 2007 that a proposal by the second respondent to construct and operate an open cut coal mine and ancillary facilities, known as the Anvil Hill Project (EPBC Referral No. 2007/3228), is not a controlled action (“**the decision**”).
8. I am informed by Ian Ratcliff, the solicitor for AHPWA, and verily believe that he sought a statement of reasons for the decision on behalf of AHPWA under section 13 of the *Administrative Decisions (Judicial Review) Act 1977* on 13 March 2007.
9. I am informed by Ian Ratcliff and verily believe, the delegate provided a statement of reasons for the decision to Mr Ratcliff for AHPWA on 19 April 2007. The application for an order for review will be commenced today, 16 May 2007, which is within 28 days after receiving the statement of reasons.
10. I am able to provide to the Court copies of all of the relevant documents for the decision if requested to do so. These documents include the detailed submission made by AHPWA about the proposal specified in paragraph 5(f) above. I have not attached these documents to this affidavit to avoid duplication as I understand the

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Deponent

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Solicitor

normal practice of the first respondent in proceedings such as this is to provide an affidavit annexing all relevant documents.

All of the facts set out in this affidavit are true and correct to the best of my knowledge and belief, except as stated otherwise.

Sworn by)
Christine May Phelps)
at Sydney this)
16th day of May 2007)
before me:

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Deponent

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Solicitor

INDEX TO ANNEXURES

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AFFIDAVIT – CERTIFICATE OF COMPLIANCE

(Form 20A)
(Order 14, rule 5A)

I, Ian Ratcliff, solicitor, certify to the Court that the affidavit of Christine May Phelps, affirmed on 16 May 2007 on behalf of the applicant complies with Order 14, rule 2 of the Federal Court Rules.

Dated: 16 May 2007

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Ian Ratcliff (Solicitor)

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CERTIFICATE OF EXHIBIT / ANNEXURE
(Order 14, rules 2(2B) and 4)

This page and the following 2 pages are the annexure marked “**CMP-1**” to the affidavit of Christine May Phelps sworn before me on 16 May 2007.

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Solicitor

CERTIFICATE OF ANNEXURE
TO THE AFFIDAVIT OF
CHRISTINE MAY PHELPS
Filed on behalf of the applicant

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CERTIFICATE OF EXHIBIT / ANNEXURE
(Order 14, rules 2(2B) and 4)

This page and the following ... pages are the annexure marked “**CMP-2**” to the affidavit of Christine May Phelps sworn before me on 16 May 2007.

.....
Solicitor

CERTIFICATE OF ANNEXURE
TO THE AFFIDAVIT OF
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