

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

Q 17 of 2004

On appeal from a single Judge of the Federal Court of Australia

BETWEEN:

MINISTER FOR THE ENVIRONMENT AND HERITAGE

Appellant

- and -

QUEENSLAND CONSERVATION COUNCIL INC

First Respondent

WORLD WIDE FUND FOR NATURE (AUSTRALIA) ACN 001 594 074

Second Respondent

NOTICE OF APPEAL

1. The Appellant (the Minister) appeals from the judgment of the Honourable Justice Kiefel in matter No Q203 of 2002, given on 19 December 2003 at Brisbane, in which her Honour:

1.1 set aside those parts of the Minister's decision made on or about 16 September 2002 by which the Minister concluded, pursuant to s 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), that a proposal by Sudaw Development Ltd to construct and operate the Nathan Dam on the Dawson River was not a controlled action in respect of any potential impact that the proposal might have on the world heritage values of the Great Barrier Reef World Heritage Area or in respect of any potential impact that the proposal might have on listed migratory species;

1.2 set aside the Minister's decision dated 4 December 2002 pursuant to s 87 of the EPBC Act that the approach used for assessment of the

Filed on behalf of the Appellant by:

Australian Government Solicitor
Level 15, 340 Adelaide Street
Brisbane QLD 4000
DX119 Brisbane

Contact: Barry Cosgrove
File ref: 04008687
Telephone: (07) 3360 5647
Facsimile: (07) 3360 5798
E-mail: barry.cosgrove@ags.gov.au

relevant impacts of the proposal be assessment by way of public environment report;

- 1.3 remitted that part of the decision set aside by the Court to the Minister for further consideration and decision.

GROUNDINGS

2. The grounds of the appeal are as follows:

2.1 Her Honour erred in holding that, in making a decision under s 75(1) of the EPBC Act, the Minister is required by s 75(2) of the EPBC Act to:

- (a) undertake wide consideration of the consequences which will follow if a proposed activity proceeds – paragraph [31];
- (b) undertake a wide enquiry, taking into account the actions of others – paragraphs [36], [37];
- (c) undertake a wide ranging assessment of the proposed action and consider the whole, cumulated and continuing effect that may flow from the proposed action – paragraph [38]; and
- (d) give the widest possible consideration, limited only by considerations of the likelihood of it happening, to potential consequences of the proposed action – paragraph [39].

2.2 Her Honour erred in holding that, in deciding whether the proposal by Sudaw Development Ltd to construct and operate the Nathan Dam on the Dawson River was a controlled action, the Minister was required by s 75(2) of the EPBC Act to consider the likely impacts of potential irrigation of land by persons other than the proponents using water from the dam.

2.3 Her Honour should have held that, in making a decision under s 75(1) of the EPBC Act, the Minister is required by s 75(2) of the EPBC Act to consider the adverse impacts that are inherently or inextricably involved in the proposed action.

2.4 Her Honour should have held that, in making a decision under s 75(1) of the EPBC Act, the Minister is not required by s 75(2) of the EPBC Act to consider:

- (a) all of the consequences which could be predicted to follow from the proposed action;
- (b) the likely impacts of activities undertaken by persons other than the proponents of the proposed action when those activities are neither proposed by the proponents nor inherently or inextricably involved in the proposed action; or
- (c) the likely impacts of all those activities on the part of persons other than the proponents which the proposed action would be likely to generate.

2.5 Her Honour should have held that, in deciding whether the proposal by Sudaw Development Ltd to construct and operate the Nathan Dam on the Dawson River was a controlled action, the Minister was not required by s 75(2) of the EPBC Act to consider the likely impacts of potential irrigation of land by persons other than the proponents using water from the dam.

ORDERS SOUGHT

1. The appeal be allowed.
2. The orders made by her Honour be set aside and the following orders substituted:
 - (a) The application be dismissed.
 - (b) The Applicants pay the Respondent's costs of the application, including reserved costs.
3. The Respondents pay the Appellant's costs of the appeal to the Full Court.



To the Respondent:

TAKE NOTICE:

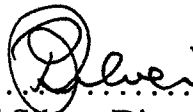
(a) Before taking any step in the proceedings you must enter an appearance in the Registry, unless you have already entered an appearance pursuant to Order 52, Rule 7.

(b) The papers in the appeal will be settled before the Registrar at 10.30 AM on 25 FEBRUARY 2004.

Level 5
Commonwealth Law Courts
119 North Quay
Brisbane 4000

The Appellant's address for service is c/- Australian Government Solicitor, level 15, 340 Adelaide Street, Brisbane, Queensland, 4000.

Date: 28 January 2004



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Richard Silver, Director, Australian
Government Solicitor,
Solicitor for the Appellant