



Mackay Conservation Group v Minister Hunt and Adani Mining Pty Ltd

Case backgrounder

August 2015

On behalf of the Mackay Conservation Group (MCG), in January 2015 EDO NSW launched a challenge to the Federal Government's approval of the Carmichael coal mine in central Queensland, which would be one of the largest coal mines in the world.

The legal challenge consisted of three grounds:

1. Conservation advices for the Yakka Skink and the Ornamental Snake

The EPBC Act makes it mandatory that the Environment Minister consider conservation advices for threatened species that will be significantly impacted by the project. Conservation advices are prepared by the Federal Department of the Environment for the purposes of identifying and protecting threatened species.

In approving the Carmichael mine, Minister Hunt failed to consider the conservation advices for the Yakka Skink and the Ornamental Snake which are both threatened species impacted by the Carmichael project.

This is the basis on which the Federal Court has set aside Minister Hunt's decision to approve the Carmichael mine. This follows the decision in [Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water, Population and Communities \[2013\] FCA 694](#) ('the Tarkine case').

The challenge also consisted of the following two grounds:

2. Climate change

MCG's claim alleged that Federal Environment Minister, Greg Hunt, failed to properly consider the impact of the Carmichael mine on the Great Barrier Reef, when he approved the project by Indian company, Adani Group, in July last year.

Given that climate change is the greatest threat to the survival of the Reef, Mackay Conservation Group says that the Minister should have considered greenhouse gas emissions

arising from the burning of the coal by Adani in India, not just the emissions from mining the coal.

MCG says that under the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister unlawfully limited his consideration of greenhouse gas emissions from the mine to those that are reportable under the *National Greenhouse and Energy Reporting Act 2007* Act, which covers only emissions from mine operations.

3. Adani's environmental record

In 2013 the Indian government found Adani guilty of serious breaches of Indian environmental law, including illegally clearing mangroves and destroying tidal creeks. Indian Courts had also found in 2012 that infrastructure associated with the Adani's port in Mundra had been built without environmental approvals.

In the amended claim, our client says that the Minister ignored that evidence, instead relying on an earlier statement made by Adani in 2010 that it has a good environmental record overseas.

The impact of the decision:

The Minister's decision has been set aside, which means that Hunt must make the decision again, according to law. Hunt must take into account the reasons why the judge set the decision aside. He must make a fresh decision but may rely on Environmental Impact Statements and other material prepared previously by Adani. Adani is not required to provide further information unless requested by Minister Hunt.

Mackay Conservation Group believes that Minister Hunt should reject the Carmichael mine. MCG believes that he should request further information from Adani in order to satisfy our alternative grounds of appeal.

We believe further that Minister Hunt should take into account additional new information that emerged through the Qld Land Court challenge to the Carmichael mine under relevant Qld law, specifically new information concerning the extent of the impact of the mine on the black throated finch, and the Doongmabulla Springs.

New information available to Minister Hunt

Through *Adani Mining Pty Ltd v Land Services of Coast and Country Inc.* new information has emerged regarding the impact of the Carmichael mine.

In relation to economics expert witness for Adani agreed the economic model relied on in the EIS was deficient and likely to have overestimated the employment benefits of the project. The more reliable estimates by Adani's expert witness calculated the total employment benefits nationally at only 1,464 per annum compared with over 10,000 per annum estimated in the EIS. Adani's expert agreed that, relative to total employment in Queensland, the increase in jobs from the project is "very small", emphatically repeating that "[i]t's not many jobs. We can agree on that... Not many jobs... No argument. Not many jobs".

The evidence provided to the Land Court included that the economics of thermal coal have dramatically changed in recent years such that the viability of the project, and any economic

benefits can no longer be assumed. Another expert economic witness called by Adani stated that “...this is an extremely risky project ... everybody knows that, I admit that.”

In relation to the nationally endangered Black-throated Finch (southern) it was revealed in the Court proceedings, and all experts agreed, that the population of Black-throated Finch in and around the mine site is the most significant and largest population in the world, and that habitat within the mine footprint was critical for the species’ survival. The Court heard that the significance of the site for the Black-throated Finch was not recognised during the EIS or SEIS, that the mine will result in destruction of this critical habitat and no confidence can be placed on the conditions that aspire to offset those impacts.

In relation to the Doomgambulla Springs Complex, which are part of the nationally significant threatened ecological community, Adani’s experts agreed that they have exceptional ecological value. Evidence to the Land Court was that a number of these springs could be lost even on Adani’s own modelling (contrary to the SEIS statement that none of the mound springs would dry up). The Court heard expert evidence that the more likely consequence of the mine proceeding is a complete loss of this spring complex which is considered irreplaceable and “one of the last the last remnants on the planet of springs that essentially retain their natural condition”.