

**FORM 55  
NOTICE OF APPEAL**

(Order 52, rule 12)

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIAN DISTRICT REGISTRY  
On appeal from the Federal Court of Australia

**VID320/2009**  
No. of 2009

BETWEEN:

**LAWYERS FOR FORESTS INC.**

**Appellant**

-and-

**THE MINISTER FOR THE ENVIRONMENT, HERITAGE AND THE ARTS**

**First Respondent**

-and-

**GUNNS LIMITED**

**Second Respondent**

The appellant appeals from the whole of the judgment and orders of the Federal Court given on 9 April 2009 at Melbourne by which His Honour ordered that the application brought by the Appellant be dismissed.

**GROUND OF APPEAL:**

1. The learned judge erred in finding that the decisions of the first respondent made on 4 October 2007 (**the Minister's decisions**) under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**the EPBC Act**):
  - (a) to approve under s133 of the EPBC Act (**the purported approval**) the taking by the second respondent (**Gunns**) of an action (**the action**) namely to construct and operate a bleached Kraft pulp mill (**pulp mill**) at Bell Bay, Tasmania and associated infrastructure; and
  - (b) to impose under s134(1) of the EPBC Act the conditions set out in Annexure 1 to the purported approval (**the conditions**) –  
were not affected by invalidating legal error.

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**Filed on behalf of the appellant**  
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2. His Honour ought to have held that the purported approval was not authorised by s133(1) of the EPBC Act as it approves the taking of the action on a provisional, staged or incremental basis in that it contemplates, when read with the conditions, a further or separate approval for each of:
  - (a) the construction of the pulp mill; and
  - (b) the commissioning and operation of the pulp mill –in circumstances where there was a single action referred by Gunns and s133(1) only empowers the Minister to approve the action in its entirety on a once only basis.
3. His Honour erred in finding that conditions 2 to 9, 32 to 36, and 38 to 40 (**the impugned conditions**) and, in particular, conditions 32 to 36 and 38 to 40 and the Environmental Impact Management Plan (**EIMP**) were authorised by s134(1) and comprehended by s134(3)(e) or (f) of the EPBC Act.
4. His Honour ought to have held that the impugned conditions were not authorised by s134(1) of the EPBC Act as in substance and effect they constitute an assessment and/or provided for an approval in respect of the action and therefore it was not open to the Minister to conclude that they were necessary or convenient for:
  - (a) protecting the Commonwealth marine area from the action, being a matter protected by a provision of Part 3 for which the purported approval has effect; or
  - (b) repairing or mitigating damage that may or will be, or has been, caused by the action to the Commonwealth marine area, being a matter protected by a provision of Part 3 for which the purported approval has effect.
5. His Honour ought to have held that the impugned conditions and, in particular, conditions 34 to 36 and 38 to 40 and the EIMP were not authorised by s134(1) nor contemplated by s134(3)(e) or (f) of the EPBC Act as they were not for the management, monitoring or testing of the action but rather were for the purpose of predicting what the impact of the action has, will have, or is likely to have on the Commonwealth marine area including the fate and impact of effluent contaminants.



6. His Honour ought to have held that the impugned conditions and in particular conditions 34 to 36 and 38 to 40 and the EIMP constitute an assessment of the action because the completion of the hydrodynamic modelling was essential to and intended to:
  - (a) achieve an understanding of how the action may impact on the Commonwealth marine area;
  - (b) determine whether response strategies to mitigate any potential impact may be required; and
  - (c) achieve an understanding of the nature of those strategies.
7. His Honour erred in concluding that the Minister had taken account of, in the sense of applying, the precautionary principle in s 391 of the EPBC Act to the decision to approve under s 133.
8. His Honour ought to have held that the Minister could not conformably under s 391 of the EPBC Act approve the action and address the lack of scientific certainty by imposing the impugned conditions.

**ORDERS SOUGHT:**

The appellant seeks the following orders:

1. An order setting aside the orders of the learned trial judge made on 9 April 2009.
2. In lieu of that order:
  - (a) a declaration that the Minister's decisions were invalid and of no effect
  - (b) an order setting aside the Minister's decisions.
  - (c) an order prohibiting the taking of any further steps in relation to the action.
  - (d) an order that the respondents pay the appellant's costs of the appeal, and of the proceedings below.

DATE: 30 April 2009

..... *Bleyer Lawyers* .....

Bleyer Lawyers Pty Ltd  
Solicitors for the Appellant



To the First Respondent c/- Australian Government Solicitor, Level 21, 200 Queen St,  
Melbourne Vic 3000

To the Second Respondent c/- Freehills, 101 Collins St, Melbourne Vic 3000

TAKE NOTICE:

- (a) Before taking any step in the proceeding you must enter an appearance in the Registry, unless you have already entered an appearance under Order 52, rule 7.
- (b) The papers in the appeal will be settled before the Registrar at –

Place: FEDERAL COURT OF AUSTRALIA  
305 WALLEN STREET  
Date: MELBOURNE VIC 3000  
Time: 27/5/2009  
2.00 pm

The Appellant's address for service is:

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30 APR 2009



FOR DISTRICT REGISTRAR