

State Reporting Bureau



Queensland Government
Department of Justice and Attorney-General

Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

REVISED COPIES ISSUED
State Reporting Bureau
Date: 6 October, 2005

Application No 341 of 2005

ALLIANCE TO SAVE HINCHINBROOK INC

Applicant

and

CLIVE COOK, DIRECTOR, QPWS NORTHERN REGION,
AS DELEGATE OF THE CHIEF EXECUTIVE,
ENVIRONMENTAL PROTECTION AGENCY

First Respondent

and

BARRY JAMES, ACTING OPERATIONS MANAGER,
ENVIRONMENTAL OPERATIONS NORTHERN REGION AS
DELEGATE OF THE CHIEF EXECUTIVE,
ENVIRONMENTAL PROTECTION AGENCY

Second Respondent

and

PORT HINCHINBROOK SERVICES PTY LTD
(ACN 081 055 414)

Third Respondent

and

CARDWELL PROPERTIES PTY LTD
(ACN 058 737 643)

Fourth Respondent

CAIRNS

..DATE 03/10/2005

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: Before me there are a number of applications made to facilitate the ultimate consideration of a judicial review of decisions made by two delegates of the Environmental Protection Agency, Mr Clive Cook and Mr Barry James, respectively first and second defendants.

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The decisions were made on applications by the Cardwell Shire Council to permit a development to extend two breakwaters at Oyster Point by further 100 metres into the Hinchinbrook Channel within the habitat protection zone of the Great Barrier Reef Coast Marine Park. The first decision was made pursuant to section 10(1) of the Marine Parks Regulations. The second decision was made pursuant to section 3.5.15 of the Integrated Planning Act.

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In terms of convenience I should first consider the application by Port Hinchinbrook Services Limited and Cardwell Properties Pty Ltd, entities connected with the development at Port Hinchinbrook ("CPL"). It was principally for the benefit of these two entities that the applications were made to the Environmental Protection Agency. Each of them now seek to be joined as respondents to the application. The applicant does not oppose this step, but the first and second respondents do on the basis that their interests have not been sufficiently identified.

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I am satisfied that CPL is the developer of the Port Hinchinbrook project. It is the entity that must carry out and pay for the work contemplated. I am satisfied that Port

Hinchinbrook Services Limited is the service provider to
Cardwell Properties Pty Ltd and is required to carry out the
dredging of the existing channel. The ostensible purpose of
the extension is to reduce the frequency and extent of the
dredging and, thus, the cost and harmful effects of the
operation.

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The interests of these entities is clear enough in the
circumstances and I will order that Port Hinchinbrook Services
Limited and Cardwell Properties Pty Ltd be joined as
respectively third and fourth respondent to the application.

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The next significant application is that by the applicant
which seeks a special costs order pursuant to section 49 of
the Judicial Review Act: that an application is made pursuant
to subsection 1(e) being an order that the applicant bear only
its own costs of the proceeding, regardless of the outcome.

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On this issue I am required to have regard to the factors
identified in subsection 2 which have been considered in
argument by counsel. Mr Litster, appearing for the third and
fourth respondent, argues that the application is premature.
This is because as yet there is an unfulfilled request for
further reasons for the decision. He argues that whilst these
are not to hand, one cannot gauge whether the applicant has a
reasonable basis for the review application. Also there is a
complaint that material upon which the applicant relies was
only recently made available.

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Despite my forming an impression that there are considerable merits for the application, I do recognise that the third and fourth respondents have the right to be heard and to put the applicant to identification of the proper grounds for its application for review.

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It does not seem to me to affect particularly the applicant's ability to pursue its application if this question is adjourned to the next Chamber day on the 7th of November 2005. This will give an opportunity for the further Reasons to be made available, for the applicant to make whatever amendments are necessary to the grounds upon which the review is sought, and for the respondents or any of them to make such response as they consider necessary to any new material.

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I propose therefore that this application be dealt with on the 7th of November 2005. In the meantime I propose to make directions as to the exchange of further materials to facilitate both that hearing and the review generally.

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HIS HONOUR: I will therefore make orders in terms of the draft initialled by me and placed with the papers.

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