

SUPREME COURT OF QUEENSLAND

CITATION: *Linc Energy Ltd v Chief Executive Administering the Environmental Protection Act 1994 & Anor* (No 2) [2014] QSC 182

PARTIES: **LINC ENERGY LTD**
ACN 076 157 045
(Applicant)

v

CHIEF EXECUTIVE ADMINISTERING THE ENVIRONMENTAL PROTECTION ACT 1994
(First Respondent)

and

KELLY FAY GLEESON
(Second Respondent)

FILE NO/S: BS 11001 of 2013

DIVISION: Trial Division

PROCEEDING: Hearing

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 5 August 2014

DELIVERED AT: Brisbane

HEARING DATE: 14 and 15 April 2014

JUDGE: Philip McMurdo J

ORDER: **1. The order made for the return of items on 1 August 2014 be set aside.**

2. The application otherwise be adjourned to a date to be fixed.

3. Costs reserved.

CATCHWORDS: ENVIRONMENT AND PLANNING – COURTS AND TRIBUNALS WITH ENVIRONMENT JURISDICTION – QUEENSLAND – SUPREME COURT – OTHER MATTERS - where the respondents, pursuant to two warrants under the *Environmental Protection Act 1994* (Qld), copied and removed electronic material from the applicant’s premises in Brisbane and Chinchilla – where the applicant

contends that the electronic material was obtained without the authority of the warrants – whether the material was “seized” or “copied” – if the material was seized, whether the material was lawfully seized under the warrant.

COUNSEL: RG Bain QC, with N Loos, for the applicant
TJH Morris QC, with M Le Grand, for the respondent

SOLICITORS: Corrs Chambers Westgarth for the applicant
Crown Law for the respondent

HIS HONOUR: Last Friday I gave judgment declaring that certain items had been unlawfully seized under a search warrant and that they should be returned to the applicant. I stayed that order for their return until today. This morning I was informed that the items which were seized were indeed returned to the applicant
5 early this year. That was done in the circumstance that by an agreement between the parties the department had caused a so-called forensic copy to be made of the material on those items.

10 The order I made, therefore, for the return of items is inappropriate, the items having already been returned by agreement between the parties. It remains to be seen if the parties cannot reach a compromise about this: what is the effect of my declaration (which will stand) about the unlawfulness of the seizure, upon the respondent's right to use the copies of this material? That is one of the reasons why the proceedings
15 will be further adjourned to a date to be fixed.

The respondents have given an undertaking that they will not seek or obtain access to any part of the forensic copy, which contains a copy or image of the term "relevant material", for a period of 30 days.

20 The orders will be that the order made for the return of items on 1 August 2014 be set aside, the application otherwise be adjourned to a date to be fixed and costs reserved.

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