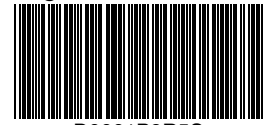




Filed: 17 August 2020 4:40 PM



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Form 85
Rule 6.2, 59.4

SUMMONS (JUDICIAL REVIEW)

COURT DETAILS

Court	Land and Environment Court of New South Wales
Division	Class 4
Registry	Land and Environment Court Sydney
Case number	2020/00239778

TITLE OF PROCEEDINGS

First Applicant	NATIONAL PARKS ASSOCIATION OF NSW INC ABN 67694961955
First Respondent	Minister for Planning and Public Spaces
Second Respondent	The Planning Secretary
Number of respondents	3 Refer to Party Details at rear for full list of parties

FILING DETAILS

Filed for	Applicant[s]
Legal representative	Bruce Stephen Woolf
Legal representative reference	
Telephone	02 9221 8522
Your reference	NPA 6331/20

HEARING DETAILS

This matter has been listed for Class 4 Directions Hearing at Land and Environment Court Sydney on 18 September 2020 at 09:15 AM.

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Summons (e-Services), along with any other documents listed below, were filed by the Court.

Summons (UCPR form 4A/4B/84/85) (633120 NPA Judicial Review Summons 17.8.20.pdf)

[attach.]

Form 85 (version 3)
UCPR 6.2, 59.4

SUMMONS (JUDICIAL REVIEW)

COURT DETAILS

Court	Land & Environment Court of New South Wales
Class	4
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

Plaintiff	National Parks Association of NSW Inc (ABN 67 694 961 955)
First Defendant	Minister for Planning and Public Spaces
Number of Defendants	3

PROCEEDINGS BEING REVIEWED

Title	Snowy 2.0 Main Works Approval
Material date	19 and 20 May 2020
Decision of	Minister for Planning and Public Spaces and Planning Secretary

FILING DETAILS

Filed for	National Parks Association of NSW Inc
Filed in relation to	The whole of both decisions
Legal representative	Bruce Woolf, Woolf Associates Solicitors
Contact name and telephone	Bruce Woolf, tel: 9221 8522
Contact email	woolfb@woolf.com.au

HEARING DETAILS

This summons is listed at .

TYPE OF CLAIM

Planning law – judicial review

ORDERS SOUGHT

1 In relation to the purported decision of the Minister for Planning and Public Spaces on 20 May 2020 to approve State Significant Infrastructure application 9687 with respect to the project known as Snowy 2.0 – Main Works:

- (a) A declaration that the Snowy 2.0 Main Works approval is and was at all times invalid and of no effect;
- (b) An order quashing the decision of the First Defendant to grant the Snowy 2.0 Main Works approval; and
- (c) An order restraining the Defendants from proceeding in reliance on the Snowy 2.0 Main Works approval.

2 In relation to the decision of the Planning Secretary on 19 May 2020 under s 5.18 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to give an environmental assessment report on the Snowy 2.0 Main Works application to the Minister, or alternatively the decision of the Planning Secretary on that date pursuant to s 5.17(2) not to require the proponent to submit a revised Environmental Impact Statement (**EIS**) to address the matters notified by the Secretary to the proponent pursuant to s 5.16:

- (a) A declaration that the decision, or each decision, is invalid and of no effect.
- (b) An order quashing the decision, or each decision, of the Second Defendant.

3 An order (subject to any protective costs order made herein) that the Defendants pay the Plaintiff's costs of these proceedings.

4 An Order under r.42.4(1) of the UCPR 2005 NSW that the Defendants may not recover costs from the Plaintiff.

5 Such further or other order as the Court sees fit.

DETAILS OF DECISION

1 The decision maker with respect to the decision to approve the Snowy 2.0 Main Works was the First Defendant.

2 The decision maker with respect to the decision to provide an Environmental Assessment Report (**EAR**) to the Minister, or alternatively the decision not to require the Third Defendant to prepare a revised EIS fully addressing the Environmental Planning and Assessment Regulation (**EP&A Regulation**) and the Secretary's environmental assessment requirements, was the Second Defendant.

3 The decisions to be reviewed are:

- (a) The decision of the First Defendant made on 20 May 2020 to approve the Snowy 2.0 Main Works; and

(b) The decision of the Second Defendant to issue an EAR to the Minister under s 5.18, or alternatively the decision of the Second Defendant not to require submission of a revised EIS under s 5.17(2), in either case made on 19 May 2020.

4 The Plaintiff seeks relief from the whole of both decisions referred to in the immediately preceding paragraph.

GROUNDS

Parties

1 The Plaintiff is a body corporate incorporated under *the Associations Incorporation Act 2009* (NSW).

2 The Third Defendant was named as the proponent in Critical State Significant Infrastructure application CSSI 9687.

Background

3 The Snowy 2.0 and Transmission Project is a proposed pumped hydro energy storage facility within the Snowy Mountains Hydro-Electric Scheme.

4 By an order made on 7 March 2018 under the EP&A Act and entitled the *Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018* the then Minister for Planning, the Honourable Anthony Roberts MP:

5 (a) Declared the Snowy 2.0 and Transmission Project to be Critical State Significant Infrastructure for the purposes of Division 5.2 of Part 5 of the EP&A Act; and

(b) Amended the State Environmental Planning Policy (State and Regional Development) 2011 by adding a description of the Snowy 2.0 and Transmission Project to Schedule 5 of that SEPP.

6 For the purpose of seeking approval for the Snowy 2.0 and Transmission Project pursuant to the EP&A Act, the proponent (the Third Defendant) divided its application into at least the following parts:

(a) Exploratory works – approved on 7 February 2019;

- i) Exploratory Works Modification 1 – approved on 2 December 2019
 - ii) Exploratory Works Modification 2 – approved on 27 March 2020
 - (b) Segment factory – approved on 31 March 2020;
 - (c) Main Works – purportedly approved on 20 May 2020 and the subject of this proceeding;
 - (d) Transmission connection – Secretary’s environmental assessment requirements issued 4 February 2019 for which an EIS is yet to be exhibited.
- 7 An application for development approval for the Snowy 2.0 Main Works was lodged by the Third Defendant with the First Defendant on about 20 June 2019.
- 8 The development the subject of the Snowy 2.0 Main Works application was described by the Third Defendant in its application as including, as permanent infrastructure:
- (a) An underground pumped hydro-electric power station complex;
 - (b) Water intake structures at Tantangara and Talbingo reservoirs;
 - (c) Power waterway tunnels, chambers and shafts between each of Tantangara and Talbingo reservoirs and the underground pumped hydro-electric power station complex;
 - (d) Access tunnels;
 - (e) New and upgraded roads to allow access and maintenance; and
 - (f) Power and communications infrastructure including a cable yard to facilitate connection between the National Electricity Market (NEM) transmission network and Snowy 2.0.
- 9 The development the subject of the Snowy 2.0 Main Works was also described by the Third Defendant in its application for approval as including the following temporary or permanent “construction elements”:
- (a) Construction compounds at Talbingo, Lobs Hole, Marica and Tantangara;
 - (b) Construction adits (openings or shafts) at Talbingo and Tantangara;
 - (c) A construction logistic site at Rock Forest;
 - (d) Accommodation camps at Lobs Hole, Marica and Tantangara;
 - (e) New roads and road upgrades and improvements;

- (f) Management of excavated rock from tunnelling activities including permanent 'storage' within Talbingo and Tantangara reservoirs and temporary and/or permanent on-land 'storage' of excavated rock, both within and without the Kosciuszko National Park;
- (g) Supporting service infrastructure including construction, power, water and waste water infrastructure;
- (h) Barges on Tantangara reservoir.

10 On 31 July 2019 the Second Defendant issued Planning Secretary's Environmental Assessment Requirements (**SEARS**) for the Snowy 2.0 Main Works, pursuant to s 5.16 of the EP&A Act.

11 On or shortly after 13 September 2019 the Third Defendant, by its agent, EMM Consulting Pty Ltd, published a document described as an EIS purporting to be made under Division 5.2 of Part 5 of the EP&A Act.

12 On about 26 September 2019 the Third Defendant's purported EIS was placed on public exhibition.

13 On 6 November 2019 the Plaintiff made submissions to the Second Defendant in relation to the Snowy 2.0 Main Works application and the EIS.

14 On or shortly after 28 February 2020 the Third Defendant, by its agent, EMM Consulting Pty Ltd, lodged with the Second Defendant a Preferred Infrastructure Report and a response to submissions (**PIR/RTS**).

15 On 20 March 2020 the Plaintiff made submissions to the Second Defendant in relation to the PIR/RTS.

16 On 19 May 2020 the Second Defendant published, and delivered to the First Defendant, an EAR in respect of the Snowy 2.0 Main Works application, purportedly pursuant to s 5.18 of the EP&A Act.

17 At no time did the Second Defendant require under s 5.17(2), the submission of a revised EIS addressing the EP&A Regulation or the SEARS.

18 On 20 May 2020 the First Defendant made and published his purported decision to approve the Snowy 2.0 Main Works.

Grounds

The Approval Decision

19 The document referred to in paragraphs 11 to 12 above was not an environmental impact statement within the meaning of Division 5.2 of Part 5 of the EP&A Act.

Particulars

- (a) The EIS was not “in the form prescribed by the regulations” as required by s 5.16(2) of the EP&A Act, and particularly was not in the form required by Schedule 2 to the EP&A Regulation, including for the reasons given at paragraphs 27 to 39 below.
 - (b) The EIS did not address the matters notified to the proponent in accordance with s 5.16(4) of the EP&A Act, including in the respects identified in paragraphs 27 to 39 below.
- 20 By reason of the matters pleaded in the preceding paragraph, the First Defendant incorrectly purported to grant approval in circumstances where:
- (a) No EIS (within the meaning of the Act) with respect to the infrastructure had been made publicly available in accordance with Division 5.2 of Part 5 of the EP&A Act.
 - (b) He had not received an EAR from the Planning Secretary, and in particular had not received a report which complied with s 5.18(2) of the EP&A Act.
 - (c) No environmental impact assessment had been carried out in respect of the infrastructure in accordance with Division 5.2 of Part 5 of the EP&A Act.
- 21 By reason of the matters pleaded in paragraph 19, the First Defendant erred in law and misconstrued his jurisdiction under s 5.19 when purporting to determine the Snowy 2.0 Main Works application.
- 22 In so doing the First Defendant:
- (a) committed an error of law amounting to jurisdictional error; and
 - (b) breached s 5.19 of the EP&A Act; and
 - (c) failed to exercise his jurisdiction under s 5.19 of the EP&A Act.

The Environmental Assessment Report

- 23 Between its receipt of the PIR/RTS on or shortly after 28 February 2020, and the issue of the Secretary's EAR on 19 May 2020, the Second Defendant considered and examined the EIS and the PIR/RTS, including against the requirements of the EPA Reg and of the SEARS.
- 24 At no time prior to 19 May 2020 did the Second Defendant exercise the power provided by s 5.17(2) to require the proponent to submit a revised EIS to address the matters notified in the SEARS.
- 25 For some or all of the reasons given at paragraphs 27 to 39 below, the document submitted by the proponent was not an environmental impact statement within the meaning of Division 5.2 of Part 5 of the EP&A Act.

Particulars

The Plaintiff repeats the particulars to paragraph 19 above.

- 26 In issuing the Secretary's EAR dated 19 May 2020, in circumstances where he had not received an EIS that complied with the EP&A Regulation, the EP&A Act or the SEARS, the Planning Secretary:
- (a) Breached s 5.18 of the EP&A Act;
 - (b) Committed an error of law amounting to jurisdictional error; and
 - (c) Constructively failed to exercise his jurisdiction under s 5.18.

The EIS

Failure of analysis of feasible alternatives

- 27 Clause 7(1)(c) of Part 3 of Schedule 2 of the EP&A Regulation requires an EIS to include "an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure".
- 28 The Main Works SEARs required that the EIS include:
- (a) "the relevant strategic context for the project having regard to State and Commonwealth legislation, policies and guidelines, including the Kosciuszko National Park Plan of Management 2006 and current initiatives to improve energy security and reliability in the National Electricity Market;"

- (b) a detailed evaluation of the merits of the project as a whole.
- (c) “the alternatives that were considered to the project”.

- 29 The EIS for Snowy 2.0 contains no analysis of feasible alternatives, or alternatively omits to analyse feasible alternatives including:
- a. The alternative of not proceeding with the project, and/or
 - b. Any alternative pumped hydro schemes within the Snowy Hydro Scheme area, other than a reference to those identified in a 30 year-old internal confidential Snowy Mountains Authority Report issued in 1991 (none of which included the 2,000 MW Snowy 2.0 project proposed).

Failure of Analysis of Cumulative Impacts

- 30 The SEARs require the EIS to include analysis of “any other existing, approved or proposed projects that could result in cumulative impacts with the project”.
- 31 The *Intergovernmental Agreement on the Environment* (1992) to which NSW was and remains a party, requires NSW to give effect to the principles of environmentally sustainable development, including “the assessment of the regional cumulative impacts of a series of developments and not simply the consideration of individual development proposals in isolation”.
- 32 The EIS for Snowy 2.0 contains no or inadequate analysis of cumulative impacts of the Snowy 2.0 Main Works with:
- a. The existing Snowy Hydro Scheme;
 - b. The other elements of the Snowy 2.0 and Transmission Project as identified at paragraph 6 above;
 - c. The construction of the Snowy 2.0 and Transmission Project;
 - d. The operation of the Snowy 2.0 and Transmission Project; and
 - e. The transmission infrastructure required both within and without the Kosciuszko National Park for the operation of the Snowy 2.0 and Transmission Project.

Failure of Analysis of Greenhouse Gas Emissions

- 33 The SEARs for the Snowy 2.0 Main Works requires the EIS to include “Air: an assessment of the particulate matter and greenhouse gas emissions of the project.”
- 34 The EIS for Snowy 2.0 contains no or no adequate assessment of greenhouse gas emissions from:

- a. The whole of the construction phase of the Snowy 2.0 Main Works;
- b. The other elements of the Snowy 2.0 and Transmission Project as identified at paragraph 6 above;
- c. The operation of the underground pumped hydro-electric power station project once commissioned;
- d. The cumulative emissions from the whole Snowy 2.0 and Transmission Project;
- e. Emissions from the sourcing or manufacture of materials for the Snowy 2.0 and Transmission Project.

Failure of Analysis of the requirements of Other Legislation

- 35 The SEARs for the Snowy 2.0 Main Works requires the EIS to include “an assessment of the likely economic, social and environmental impacts of the project having regard to the requirements in any relevant Government legislation, policies and guidelines... including... the measures that would be implemented to avoid or minimise impacts, including a consolidated summary of the proposed mitigation measures for the project; ... Biodiversity: an assessment of the biodiversity impacts of the project on terrestrial, aquatic and groundwater-dependent ecosystems, including listed Commonwealth and State threatened species and communities and listed Commonwealth migratory species; a strategy to offset the residual impacts of the project on these ecosystems, focussing on enhancing the biodiversity values of the Kosciuszko National Park in the medium to long term”
- 36 The “relevant Government legislation” referred to in the SEARs, in the context set out in the preceding paragraph, includes at least the *Wilderness Act 1987* (NSW), the *Biosecurity Act 2015* (NSW) and the *Fisheries Management Act 1994* (NSW).
- 37 The EP&A Regulation requires “a list of any approvals that must be obtained under any other Act or law before the development, activity or infrastructure may lawfully be carried out” [Clause 7(1)(d) of Schedule 2].
- 38 By a determination issued in April 2011, and which remains in force, the Fisheries Scientific Committee established under Part 7A of the *Fisheries Management Act 1994* (NSW) the aquatic ecological community in the catchment of the Snowy River in NSW was listed as endangered.

Particulars

- (a) Determination FD46 dated April 2011.
- (b) The area covered by the determination includes all rivers, creeks and streams of the Snowy River catchment within the State of New South Wales and including the Snowy River, Eucumbene River, Thredbo River, Gungarlin River, Mowamba River, Bombala River, Maclaughlin River, Delegate River, Pinch River and Jacobs River. This area includes the river bed channel inundated by the man-made lakes Jindabyne, Eucumbene, Island Bend and Guthega but excludes the ecological communities that have developed in the waters of the impounded man-made lakes.

- 39 The EIS for Snowy 2.0 Main Works does not address:
- a. The impact of the Snowy 2.0 Main Works or the cumulative impact of the Snowy 2.0 and Transmission Project on wilderness areas in the Kosciuszko National Park, other than "physical disturbance areas" (as defined in the EIS);
 - b. The impact of the transfer of pest fish and pathogens into the upstream catchment above Tantangara Reservoir, or the downstream rivers and dams beyond the "physical disturbance area";
 - c. The impact of the Snowy 2.0 Main Works or the cumulative impact of the Snowy 2.0 and Transmission Project on the endangered aquatic ecological community in the catchment of the Snowy River.

Relief claimed

- 40 The Plaintiff claims the relief sought in paragraphs 1 and 2 under the heading "Orders Sought" above on the basis of s 9.45 of the EP&A Act, or alternatively, on the basis of s 69 of the *Supreme Court Act 1970*.

SIGNATURE OF LEGAL REPRESENTATIVE

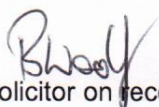
This summons does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature


Solicitor on record

17 August 2020

NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Level 4, 225 Macquarie Street, Sydney NSW
Postal address	GPO Box 3565 Sydney NSW 2001
Telephone	9113 8200

[on separate page]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiff**

National Parks Association of NSW Inc

DefendantsMinister for Planning and Public Spaces –
First Defendant

Planning Secretary – Second Defendant

Snowy Hydro Ltd (ABN 17 090 574 431) –
Third Defendant**FURTHER DETAILS ABOUT PLAINTIFF[S]****Plaintiff**

Name	National Parks Association of NSW Inc		
Address	Suite 1.07		
[The filing party must give the party's address.]	55 Miller Street		
	PYRMONT	NSW	2009

Legal representative for plaintiff[s]

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Practising certificate number	06691		
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DETAILS ABOUT DEFENDANTS

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Second defendant

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Third defendant

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 COOMA NSW 2630