

Environmental Defender's Office Of Northern Queensland Inc.

First Floor, 96-98 Lake Street
Cairns, QLD 4870. Ph (07) 4031 4766, Fax (07) 4041 4535
Email: www.edonq@edo.org.au



EDO Alert! Decision on the strike out in False Cape

6th June 2006

CAFNEC & Save our Slopes v Reef Cove Resort Pty Ltd & Cairns City Council

What was the strike out about?

In February 2006, Reef Cove's solicitor applied to strike out grounds 1A-1D of the application lodged by the Cairns and Far North Environment Centre (CAFNEC) and Save our Slopes (SOS). Those grounds relating to various errors of law and unreasonableness of decision of the Cairns City Council failing to refuse the development approval because of the conflicts with the Hillslopes Development Control Plan (Hillslopes DCP), and because there were no good planning grounds for allowing the approval despite the conflict. In particular, CAFNEC and SOS had alleged that Reef Cove had not demonstrated that the site was safe and serviceable without resort to complex engineering solutions, was contrary to visual integrity of the hillslopes, that buildings and roads would not be built on a slope greater than 1 in 3, did not identify areas too steep to develop on account of slope stability and failed to provide adequate visual assessment report, amongst other matters.

What was the decision of the Court?

Judge White found that the Special Facilities Zoning allowed as of right uses for residential development and contemplated subdivision of the land and therefore constituted good planning grounds for approving the development despite the conflicts with the Hillslopes DCP and Strategic Plan. On this basis he struck out the grounds of the case that referred to good planning. The Judge also found that CAFNEC and SOS had not identified sufficiently a basis for unreasonableness arguments because the ground relied on (the Special Facilities zoning) should be given considerable weight in the rezoning application. His Honour also found that the matter of whether the sufficient planning grounds advocated by Reef Cove justified the approval despite the conflicts with the Hillslope DCP was a matter for Council and not able to be judicially reviewed.

His Honour also found the Council was not required to say anymore than there were conflicts with the reconfiguration proposal and the Strategic Plan and Hillslopes DCP and was not required to enumerate the detail of these conflicts.

In essence, his Honour argued that the case submitted by CAFNEC and SOS would be relevant to a merits appeal but not judicial review, which is much narrower and relates mainly to procedural matters. CAFNEC and SOS were seeking to adduce evidence to support some of these issues, but His Honour has rejected the use of evidence in these proceedings also and found that the proposed geotechnical evidence was a fishing expedition.

What parts of the case remain?

CAFNEC and SOS can continue to argue that the Council's decision was improper exercise of power because it decided it was bound to follow the earlier rezoning to Special Facilities Zoning, and failed to follow the procedures in determining the extent of conflict with Hillslopes DCP and Strategic Plan for City of Cairns and whether there were sufficient planning grounds to approve the application notwithstanding the conflict.

The hearing is expected to be heard in August 2006. CAFNEC and SOS are considering whether to appeal the strike out decision.

What else can be done?

The case highlights the problems with Special Facilities zonings and the need for the Queensland Government to reform the *Integrated Planning Act 1997* to ensure that old approvals such as False Cape are not permitted to go ahead without strict compliance with Codes designed to impact on hillslope stability. CAFNEC and SOS are asking the Minister for Environment, Local Government, Planning and Women to urgently review the strength of the Hillslope Codes in the Cairns Plan and its predecessor in the transitional Plan to make strict compliance with these requirements is mandatory. No development should occur on hillslopes without adequate consideration of the areas that are hazardous to built on at the development approval stage. We are also seeking to ensure that the State Planning Policy on Coastal Hazards is strengthened to ensure that these matters are adequately considered by the State. SOS has also appealed the decision to the Court of Appeal and the appeal will be heard on 16th November 2006.

For more information, contact Kirsty Ruddock at ED0-NQ on (07) 4031 4766.

Why not join or donate to EDO so we can continue to run test cases like this? See our memberships-donations form on our website www.edo.org.au/edonq.