

Gerroa Environment Protection Society Inc v Minister for Planning & Cleary Bros (Bombo) Pty Ltd [2008] NSWLEC 173

On 16 May 2008, the Land and Environment Court of NSW attached more stringent conditions to the Part 3A approval for a sand quarry extension near Gerroa on the South Coast of NSW. Though the Court approved the mine, the additional conditions will reduce the impact of the mine on two endangered ecological communities on the site, and improve the compensatory planting regime considerably. The final detail of the Conditions will be resolved by the Court some time after 23 June 2008.

The Facts

In July 2007 the Minister for Planning granted Part 3A approval to the extension of a sand mine run by Cleary Bros (Bombo) Pty Ltd near Gerroa, on the South Coast NSW. Among other impacts, the sand mine would clear 7.5ha of vegetation, including areas of the Littoral Rainforest, and all of the Bangalay Sand Forest, endangered ecological communities (“EECs”) on the site. It would also potentially impact another two EECs, Phragmites Rushland and a large area of Swamp Schlerophyll Forest on the edge of the mine (dredge pond) due to alterations to the groundwater. This vegetation is also recorded as high conservation value under the Kiama Local Environmental Plan.

In addition to the impacts on the EECs, the other main reason Gerroa Environment Protection Society (“GEPS”) sought to have the mine refused is because it would clear an important wildlife corridor (“the east west link”) between the Swamp Schlerophyll Forest and the Seven Mile Beach National Park habitat across the road from the mine, while the compensatory plantings proposed to replace this corridor were inadequate.

After nine days of hearing and several iterations of the conditions and Landscaping and Rehabilitation Management Plan for the clearing and plantings, judgment was handed down on 16 May 2008 approving the project but imposing several additional conditions, as follows:

- That the dredge pond be lined with “high conductivity” material so as to prevent a drop in groundwater below the Swamp Schlerophyll forest;
- That specific measures be implemented to protect the remaining stand of Littoral Rainforest;
- That the clearing etc. be done with best practice;
- That additional areas (to the south of the site) be included in the conservation area; and
- That the buffers along Blue Angle Creek be 10m wider.

The conditions to which these requirements were added were already a vast improvement on the conditions as originally issued by the Minister in 2007, as follows:

- Criteria for whether the revegetation is an effective replacement for the east west link, and a requirement that this be certified by an ecologist before the east west link can be severed;
- A requirement that extraction must stop if certain conditions relating to rehabilitation are not met;
- Better monitoring of the groundwater impacts, to assess impacts on the groundwater, which are to be reviewed by the Environmental Officer, and a protocol for addressing any problems, including halting of sand extraction while further investigations and remedial action are being carried out;
- The requirement that the conservation area be insured against fire or vandalism;
- The requirement that the plantings be carried out according to best practice (specifically, in accordance with the principles in *Bringing the Bush back to Western Sydney: Best Practice Guidelines for Bush Regeneration on the Cumberland Plains*);
- The requirement that certain species be planted along the 5m setback zone to the Littoral Rainforest that will not be cleared, in order to reduce edge effects;
- An improved buffer around the dredge pond to protect the remaining vegetation;
- Various improvements to the revegetation programme;
- The Landscaping and Rehabilitation Management Plan is now legally binding.

The parties are now making submissions as to how the Court's orders of 16 May 2008 should be implemented, and Final Orders and Conditions will be issued by the Court some time after 23 June 2008.