

Case Summary

Gwandalan Summerland Point Action Group Inc v Minister for Planning & 2 Ors [2009] NSWLEC 140

In a lengthy and detailed decision this week the Land and Environment Court declared that Part 3A approvals for the development of land at Catherine Hill Bay and Gwandalan made by the then Minister for Planning, Mr Frank Sartor, were void and of no effect. The applicant, Gwandalan Summerland Point Action Group, was represented by the Environmental Defender's Office.

In 2006 a Memorandum of Understanding ("MOU") was signed between Rosecorp and the former Minister for Planning which would allow sites at Gwandalan and Catherine Hill Bay to be developed for residential purposes in return for 300 hectares of land being transferred to the NSW Government from Rosecorp to be dedicated for conservation purposes. The MOU was later formalised into a Deed of Agreement.

Subsequently, a new State Environmental Planning Policy (SEPP) was gazetted which permitted the rezoning of the land. The area had previously been designated a wildlife corridor between the Central Coast and the Lower Hunter and was classified as an 'environmentally sensitive area of State significance'. The rezoning increased the development potential for both Catherine Hill Bay and Gwandalan.

A Concept Plan and Project Application were lodged by the developer under Part 3A of the *Environmental Planning and Assessment Act 1979*. Both the Concept Plan and the Project Application were approved by the former Minister for Planning. These approvals were challenged by the Gwandalan Summerland Point Action Group in these proceedings.

The Court described the Minister as having 'a favourable disposition' towards the development proposals. In looking at the issue of apprehended bias by an administrative decision-maker Justice Lloyd confirmed that, at the time the approvals were granted, a fair minded lay observer, having knowledge of the material objective facts might reasonably apprehend that the Minister might not have brought an impartial and unprejudiced mind to the determination of the applications.

Justice Lloyd described Mr Sartor as being 'enamoured with the whole proposal of a land-bribe in exchange for rezoning and associated development'.

His Honour noted that sections 93F to 93L of the *Environmental Planning and Assessment Act 1979* set out the proper processes for planning agreements between the Minister and developers, which provide built-in safety procedures including requirements for public notification and exhibition and rights for the public to make submissions. This is in recognition of the danger that such agreements could subvert the proper operation of the planning and assessment process. His Honour found that neither the MOU nor the Deed could be regarded as a legal "planning agreement" under the Act.

His Honour further stated:

"By taking into account the existence of both or either of the MOU and the Deed, the Minister took into account irrelevant considerations."

His Honour ordered the Minister and Rosecorp to pay the legal costs of Gwandalan Summerland Point Action Group.

This judgment will have implications for the assessment of other projects involving similar MOU's and Deeds between the former Minister and other entities including Hardie Holdings Pty Ltd, Coal and Allied Industries Ltd and Regional Land Management Corporation.

In a statement issued shortly after the judgment the current Minister for Planning stated that she would not be appealing the decision of the Court. Rosecorp has 28 days from the date of Justice Lloyd' judgment in which to file an appeal.