

Case note

Hub Action Group Incorporated v Minister for Planning and Orange City Council [2008] NSWLEC 116

On 17 March 2008 the Land and Environment Court upheld an appeal against the Minister for Planning's approval of a waste facility near Molong. In rejecting the proposal, the Court stressed the importance of preserving productive agricultural land for future generations, and planning for sustainable waste management.

Background

Orange City Council proposed to construct a regional waste facility near Molong, in Cabonne Shire. The proposal was to be implemented in 3 stages. Under Stage 1, the site would operate as a municipal landfill for Cabonne only. Stage 2 would involve the construction of a resource processing facility for both Orange and Cabonne. In Stage 3, the landfill would receive waste from both council areas. Orange City Council was seeking approval of stages 1 and 3 only, with the intention of seeking a separate approval from the Minister for Stage 2.

Stages 1 and 3 were approved by the Minister for Planning in December 2006, following which the Hub Action Group appealed to the Land and Environment Court. The Action Group was represented in Court by Malcolm Craig QC and Ian Hemmings, with the EDO instructing.

The site of the proposed facility was zoned rural and was classified as "prime crop and pasture land" according to state-wide agriculture maps. Under clause 10 of Cabonne Local Environmental Plan, consent could not be granted for development in a rural zone unless the consent authority was satisfied that "*the development will not have an adverse effect on the long term use, for sustained agricultural production, of any prime crop and pasture land*".

The Hub Action Group argued that use of the site for a landfill would clearly have an adverse effect on the long-term use of the site for agricultural production, therefore clause 10 could not be satisfied.

The Action Group also contended that the Council did not need a landfill of this size at this point in time, but with earlier implementation of waste reprocessing and recycling facilities, existing landfills could be made to last longer.

Another issue was the impact on bee-keeping in the vicinity of the subject site. Waste facilities can lead to beehives being contaminated with American Foulbrood Disease, an infection spread through contaminated honey.

Chief Justice Preston found that the proposed development was unacceptable and ought not to be approved on all of the above grounds.

In relation to the long-term effect on agricultural production, His Honour held that the expression “long-term” included the sum total of immediate and future uses. In this context it was relevant to consider the fact that large parts of the land would be unusable during the 40-year operational period of the landfill, as well as the effects on the productivity of the land post-closure.

His Honour found that the destruction of agricultural land was contrary to the principle of intergenerational equity (at [72]):

“(the) obligation of inter-generational equity would be breached by the carrying out of development which has an adverse effect on the long-term use, for sustainable agricultural production, of prime crop and pasture land. Such development compromises future generations’ ability to use and enjoy to the same degree as the present generation the prime crop and agricultural land”.

The proponent claimed that the proposal would result in minimisation of the amount of waste disposed to landfill, through the resource reprocessing facility to be implemented in Stage 2. However, the Court found that it could not rely on the effect of the resource reprocessing facility, since this was not part of the proposal presented to the Court. All that it was being asked to approve was a landfill proposal, which was not, of itself, a sustainable proposal.

Orange City Council argued that it could guarantee sustainable waste management via conditions of consent limiting the proportion of wastes which could be disposed of to landfill each year. His Honour found that he did not have the power to impose such a condition, because it would involve regulating council’s conduct in ways which were unrelated to management of this particular waste management facility.

Therefore the Court found that the proponent had failed to establish that the proposal would assist in achieving sustainable waste management for Orange and Cabonne Local Government Areas.