SOUTH AUSTRALIA

Carter v Mid Murray Council [2007] SASC 145 - Clarification of Structures and Building Work –

By David Billington – Associate – Norman Waterhouse

The recent Supreme Court ("the Court") decision of *Carter v Mid Murray Council* [2007] SASC 145 reversed the Environment, Resources and Development Court's previous decision as to whether the resurfacing and extension of an existing airstrip was "development" within the meaning of the Development Act 1993 ("the Act").

The Court clarified what amounts to a "structure", the construction of which will require development approval under the Act. The Court applied a fact and degree test rather than a test of whether the Building Rules had application to the structure.

Reversing the reasoning of the court below, the Court held that upgrading of the airstrip was "building work" within the meaning of the Act because it involved the construction of a "structure" similar to a road. However, the original airstrip was not considered to be a "structure" as it arose from mere grading of earth to create a flat airstrip.

The new test endorsed by the Court is that if one can sensibly speak of something as being a "structure" which is "constructed", bearing in mind the intent and object of the Act to regulate "development", then the construction of that structure will be development and subject to the Act.

Hall & Ors v Burnside CC, City Apartments & Dodd (Registered) (No 3) [2007] SASC 3 – Interim Injunction Denied –

by Jake Jervis-Bardy – Norman Waterhouse

On 5 September 2005, the Full Court of the South Australian Supreme Court ("SASC") declared final development approval valid in respect of a decision of the Environment, Resources & Development Court ("the ERD Court"). Following this, the Applicants applied to have that decision declared invalid and quashed by the High Court. In the interim, the Applicants applied to the Supreme Court for an interlocutory injunction to restrain the approved development pending hearing of the action. This decision relates to that injunction application.

In relation to granting the injunction, Bleby J found that the balance of convenience was against granting the interlocutory application, and dismissed it accordingly. Bleby J stated among other reasons, that the *"declaration by the Full Court that the development authorisation is valid remains a barrier to the granting of the relief"*. Bleby J also noted that granting the application would be of *"significant prejudice to City Apartments"*.

Goode v City of Burnside [2007] SAERDC 5 – Significant Trees –

by Jake Jervis-Bardy – Norman Waterhouse

This was an appeal in the ERD Court against a decision of a council to refuse an application for the removal of two significant trees. Commissioner Hodgson overturned the decision and granted Provisional Development Plan Consent on the grounds that the subject trees caused substantial damage to the dwelling and garage situated on the subject land. The Court held that if it were not for the evidence as to damage being caused by the trees, the decision would have been finely balanced. However, when that damage and the risk represented by the trees were taken together, the Court was forced to conclude that the removal of the trees was necessary and that Provisional Development Plan Consent for that purpose should be granted.