Supreme Court of South Australia

Mar Mina (SA) Pty Ltd v City of Marion & Anor [2008] SASC 120

By Vasiliki Danambasis – Associate – Norman Waterhouse

In Mar Mina (SA) Pty Ltd v City of Marion & Anor [2008] SASC 120, the Plaintiff sought judicial review of the Council's processing and subsequent assessment of a development application for a private primary school in a Neighbourhood Centre Zone. The Court had cause to consider:

- the validity of the Development Regulations which assign different forms of development to Public Notification Categories,
- the scope and operation of Section 33(3) 'reserved matters', and
- in what circumstances amended plans should be recirculated to referral bodies for further comment and re-notification.

His Honour Justice Debelle held that the Regulations assigning categories were valid and found no error with the Council's decision not to re-notify or re-refer the amended plans. Insofar as the decision on the merits of the application was concerned, Justice Debelle concluded that the grant of development plan consent was invalid because: the decision-maker failed to address the question whether the proposed development was seriously at variance with the Development Plan, and even if it had done so, it had regard to several irrelevant factors and failed to consider factors which were relevant to the assessment of the proposal; the proposed development was on a proper planning assessment 'seriously at variance'; and the decision to reserve consideration of a chain wire mesh fence three metres high did not accord with the intent of Section 33(3) and was an invalid exercise of that power. The Panel were of the view that the fence had a material bearing on the question whether development approval should be granted.

In considering the effect of Section 33(3) the Court concluded that: It is a power that must be exercised with great care. The primary purpose of [the section] is to enable approval of staged development. It might also be utilised to deal with something that is quite incidental to the development and does not effect the question whether development consent should be granted. Justice Debelle further supported his view on the basis that no development application had been lodged for the fence and therefore there was no specified matter on which the Panel could reserve its consideration.

Paradise Development (Investments) Pty Ltd v District Council of Yorke Peninsula & Anor – [2008] SASC 139

By Felicity Niemann – Associate – Norman Waterhouse

Hot on the heels of the Supreme Court decision of Mar Mina (SA) Pty Ltd v City of Marion & Anor [2008] SASC 120, the Supreme Court of South Australia delivered its decision of Paradise Developments (Investments) Pty Ltd v District Council of York Peninsula & Anor [2008] SASC 139, a further judgement considering the question of 'seriously at variance' and its consideration in planning assessment. The application for judicial review before the Supreme Court sought to set aside a development approval by the District Council of York Peninsula granting consent to the construction of nine self contained apartments.

The grounds for that application included, among other things; that the application had been incorrectly categorised, and was in fact a Category 3 development; that the proposed development was seriously at variance with the Development Plan and also that; the Council's delegate had failed to consider whether the proposed development was seriously at variance with the Development Plan. Similarly, to the decision in Mar Mina Justice Debelle held (at