undertake noise modelling but, rather, criticised the relevant noise guidelines and standards for predicting noise levels for wind farms. The Court held that it was not its role to re-write the noise standards. Rather, its role generally was to apply the standards as they exist.

In dealing with the anecdotal evidence, the Court stated that the framers of the Development Plan must have known that even in a sparsely populated rural area there would be residents who would be able to hear the turbines, and that a small percentage of those were likely to be annoyed. Thus, the Court was unable to draw any inferences from the anecdotal evidence in circumstances where the proposal was shown to sufficiently achieve relevant environmental noise standards.

Comment

The Quinn decision provides much anticipated clarification in relation to the interpretation and application of REF provisions in a number of Development Plans.

The decision confirms that the REF provisions encourage the development of wind farms in appropriate locations.

The decision also confirms that zone provisions relating to visual amenity must be viewed in the context of the REF provisions relating to visual amenity, which necessarily assume there will be some modification to the landscape.

The decision also confirms that notwithstanding that the establishment of a wind farm may cause noise nuisance to some people, the REF provisions seek the avoidance or minimisation of excessive noise which, in turn, invites assessment against relevant noise standards.

Peter Psaltis, Partner, Norman Waterhouse Lawyers

Environment, Resources and Development Court (ERD Court)

Sweeny v City of Onkaparinga [2010] SAERDC 65

The decision in Sweeny v City of Onkaparinga from the ERD Court contains some important guidance concerning the determination of residential density.

An appeal was brought against the decision of the Council to refuse a proposal for the construction of two two-storey group dwellings to the rear of an existing dwelling, a car-port in front of the existing dwelling, the removal of four significant trees and related landscaping and driveway works.

The proposed development was located in a policy area which strongly encouraged the retention of very low-density residential development.

The appellant's expert witness examined four areas surrounding the proposed development, and found that area 1 had a rate of 3.5 dwellings per hectare, area 2 had a rate of 6.1 dwellings per hectare, area 3 (which included the subject land) had a rate of 9 dwellings per hectare and area 4 had a rate of 10.2 dwellings per hectare.

The appellant argued that density is a relative concept, and as such, the existing density of area 3, having regard to its dwelling per hectare rate compared to areas 1, 2 and 4 was already medium-density and, as such, the proposed development was in accordance with the existing pattern of development in the locality.

This argument was advanced despite the fact that the average allotment size in the locality was 986m2, and the site area for each proposed group dwelling was approximately 350m2.

In rejecting the appellant's density argument, the Court held that density is indeed a relative concept, but that it is determined by reference to not only dwellings per hectare, but also site area, site coverage, bedrooms per dwelling and so on.

Accordingly, the Court found that, having regard to all of these factors, particularly site area and site coverage, the existing density was not medium-density, but rather low-density, and as such, the proposed development would be at odds with existing development in the locality.

This judgment is a useful reminder that although density is a relative measure, and can vary from locality to locality, factors such as site area and site coverage cannot be ignored in making a determination in this regard.

Victoria Shute, Associate, Wallmans Lawyers

VICTORIA

Civil and Administrative Appeals Tribunal

Coastal Estates Pty Ltd v Bass Coast SC & Ors (Red Dot) [2010] VCAT 1807

This summary is provided by the Tribunal:

The applicant filed proceedings under s 39 of the *Planning and Environment Act 1987* (P&E Act) having made submissions to Amendment C93 to the Bass Coast Planning Scheme and appearing before the panel appointed to consider submissions in relation to that planning scheme amendment. The applicant claimed to be substantially and materially affected by a failure of the panel to comply with ss 24(a), 25(1) and 161(1)(b) of the P&E Act in considering and hearing submissions and in reporting its findings on a variety of issues.

Some of the applicant's concerns were that the panel that took into account irrelevant considerations, or made findings or recommendations not open on the evidence, wrong in law, or manifestly unreasonable.

The decision concludes that the jurisdiction of the Tribunal under s 39 of the *Planning and Environment Act 1987* does not enable a review of substantive errors by the panel, but is limited to procedural defects. [The Tribunal makes no finding as to whether the panel in this case misdirected itself on the material before it.]

Some of the applicant's concerns raised issues of natural justice, and whether the panel provided a fair hearing. The Tribunal held that it did have jurisdiction to consider these matters under s 39 but, after examining the specific allegations, found no breach to have occurred. In reaching this conclusion, the Tribunal makes some observations on the principles of natural justice applicable to panel hearings.

The Tribunal also makes comment on the panel's participation in the s 39 proceedings, and expresses concern at the risks to panel impartiality if it becomes a protagonist in its own cause or seeks to defend its position through counsel or affidavit evidence.

Linaker v Greater Geelong CC & Ors (Red Dot) [2010] VCAT 1806

This summary is provided by the Tribunal.

The issues in this case concern an applicant's standing pursuant to s 33B(1) of the *Environment Protection Act 1970* (Vic) to review a decision of the EPA to issue a works approval and who may rely upon the grounds specified in s 33B(2) of the Act.

The Supreme Court has recently considered the issue of standing by applicants in environmental and similar cases in Environment *East Gippsland Inc v Vic Forests* [2010] VSC 335 and *Thirteenth Beach Coast Watch Inc v Environment Protection Authority and anor* [2009] VSC 53. In the Environment East Gippsland Inc case, Justice Osborn reviewed the authorities on standing and referred to comments made by Sackville J in *North Coast Environment Council Inc v Minister for Resources* [1994] FCA 1556; (1994) 55 FCR 492, which identified the following principles:

A plaintiff must demonstrate a 'special interest' in the subject matter of the action. A 'mere intellectual or emotional concern' for the preservation of the environment is not enough to constitute such an interest. The asserted interest 'must go beyond that of members of the public in upholding the law ... and must involve more than genuinely held convictions'.

A plaintiff may be able to demonstrate a special interest in the preservation of a particular environment. If it does so an intellectual or emotional concern is no disqualification from standing to sue.