

Andrews DCJ noted that:

the pleader is an experienced litigant, the Brisbane City Council. The circumstances under which the Brisbane City Council made its allegations were such that I conclude it had ample time to consider the statutory basis for making its allegations. It had commenced in the Magistrates Court on a sound statutory footing. When electing a year later to pursue the first and second respondents on another basis it undoubtedly had some onus to consider the reasonableness of that basis and it had the expertise to do so: [21]

Additionally, alleging an offence against a party is a serious matter, and an experienced litigant like the Council had an obligation to consider properly whether to bring proceedings.

Ultimately, Andrews DCJ distinguished this case from *Copley* because this case involved an experienced litigant, and an offence. In this case, indemnity costs were awarded.

South Australia

Reffold v Development Assessment Commission (No 2)

[2012] SAERDC 52

by Joanna Osborne

This decision concerned an appeal against a decision of the Development Assessment Commission (the DAC) to refuse to extend the life of a development approval for a cabin park at Andamooka.

When determining whether to grant an extension, the Environment Resources and Development Court has regard to:

- the length of the appellant's delay in applying for the extension
- the reasons for the delay
- whether the applicant has pursued a development approval with diligence
- whether there has been a change to the Development Plan or the planning legislation
- any prejudice likely to be suffered by the grant or refusal to extend the period
- any other factors appropriate to the circumstances.

In this case, the appellant argued that the fact that the DAC had extended the life of three other development approvals in the same policy area within the relevant Development Plan for similar developments was a sufficient ground for the Court to overturn the DAC's decision and allow the extension. The Court found that inconsistent decision-making was a relevant factor to be taken into account when determining the matter.

The Court determined that, on the evidence before it, there appeared to be little to distinguish two of these other development approvals from the appellant's, and that it appeared that the DAC had made an inconsistent decision in refusing to extend the life of the appellant's development approval. However, there was insufficient evidence before the Court to satisfy it that the DAC had made an inconsistent decision, and the Court acknowledged that there was likely to be other information relevant to the appellant's proposed development, on which the DAC based its decision, which distinguished the appellant's application for an extension of time from the other three approvals.

The Court determined that, whilst the existence of the other extended approvals was a relevant consideration, they can be only of limited weight in the Court's overall determination.

Ultimately, the Court upheld the DAC's decision to refuse to extend the life of the development approval.

Victoria

Shell Company of Australia v Hobsons Bay CC & Ors

(includes summary) (Red Dot)

[2012] VCAT 1184

by Felicity Millner and Tom Dreyfus

These proceedings concerned an application by the Shell Company of Australia (Shell) to review the decision of the responsible authority to allow for the construction of three double storey dwellings opposite Shell's fuel storage facility at Newport, in Melbourne's inner-West. Shell's facility is listed as a 'major hazard facility' as defined under the *Occupational Health and Safety Regulations 2007*.