recent cases

SOUTH AUSTRALIA

Allen v District Council of Lower Eyre Peninsula [2007] SAERDC 22.

By David Billington – Associate – Norman Waterhouse
(as previously published by Norman Waterhouse Lawyers in Environment and Planning Briefly October Issue No 36)

Imposing Valid Land Division Conditions regarding Electrical Services

The ERD Court's decision in *Allen* is a reminder of the limits for conditions which may be imposed on a grant of land division consent under Section 33(1)(c) or (d) of the *Development Act 1993.* Relevant authorities should always be careful to ensure that such conditions are permitted by the sub-paragraphs of paragraphs (c) or (d) or are permitted by Regulations 50 to 55 of the *Development Regulations 1993.*

In *Allen*, the Council sought to impose a condition which read "the applicant shall at his/her expense, provide all Electricity services to each [created] allotment to the requirements of the relevant authority". The ERD Court held that such a condition did not find any basis in the Act or the Regulations and as such could not be imposed on the land division consent. The Court held that Regulation 54(5) contemplates only that a planning authority can require the installation of electrical services *within the relevant division.* In this case, to comply with the condition the applicant would have had to extend the electricity supply by running a 19kV distribution line on land along a public road to each allotment. On this basis, the Court held that the requirement was beyond the power of the Council and therefore invalid. On appeal to the Supreme Court the Full Court took a different view. While they agreed that the Condition was invalid it did so on a different basis finding that the purpose of Regulation 54(5) is to prescribe the standard to be complied with IF electrical services are proposed to be provided. It does not require electrical services to be provided, and therefore there is nothing in S33(1)(c) or Regulations 51 – 55 imposing any obligation on a person dividing land to provide electricity to the proposed allotments. Councils wishing to impose such obligations should review their Development Plans to see whether there is adequate policy to do so.

City of Mitcham v Terra Equities Pty Ltd [2007] SASC 244

By Rebecca McAulay – Associate – Norman Waterhouse
(as previously published by Norman Waterhouse Lawyers in Environment and Planning Briefly October Issue No 36)

Determining Site Area

The Appellant had applied to the Council for authorisation to demolish an existing dwelling and outbuildings, and to erect five single storey dwellings. There was no indication that a separate certificate of title would be created for each dwelling. Upon refusal of the application, the Appellant appealed to the Environment, Resources and Development Court ("the ERD Court"). The ERD Court allowed the appeal and that decision was then appealed to the Supreme Court.

An important issue considered by His Honour Justice Debelle of the Supreme Court was the manner in which site area for each dwelling should be calculated. It was held that calculation by the division of the total area of the site by the number of dwellings was not the correct approach as it had no regard to the actual site area of each dwelling.

While Justice Debelle recognised that this method of calculating site areas is a long established practice he held that ...*"an automatic, if not mechanical, practice of this kind which determines an average site area is not appropriate and should be discontinued. The practice fails to have regard to the various factors which in each case might affect the site area of each dwelling."*