

**Town of Gawler v Impact Investment Corporation Pty Ltd [2007] SASC 356**

*By Rebecca McAulay – Associate – Norman Waterhouse and Thomas Ivey –  
Clerk – Norman Waterhouse*

**Conditions precedent on the grant of approval**

This case involved an appeal to the Full Court of the Supreme Court by the Town of Gawler following a decision of the ERD Court to grant provisional development plan consent to Impact Investment Corporation in respect of a large, “bulky goods” retail facility including a petrol station with associated carparking. The site occupied 3.68 hectares and was situated on the south-eastern corner of the intersection of Main North Road and Para Road, Evanston Gardens within the Business Zone (“**the Zone**”) of the Town of Gawler Development Plan (“**the Development Plan**”).

The principal reason for refusal by the Council was the impact that the proposal would have upon traffic. Principle of the Development Control 8 (“**PDC8**”) concerned “Parking, Access and Servicing” within the Zone. It provided that no development should occur within the Zone until certain alterations to roads and traffic signals had been undertaken as depicted in Figure B/1, which related specifically to the subject land.

The Appellant previously argued that PDC8 was an essential pre-condition to development occurring within the Zone. However, the ERD Court held that the Development Plan was not to be read like a statute, and that there was “abundant authority” that PDCs and Objectives were to be read as “provisions against which a proposal is to be assessed”. Further, it was rare for a proposed development to satisfy every desired element of a Development Plan, and therefore a discretionary approach was necessary.

The ERD Court found that the proposal was “sufficiently compliant” with the Development Plan and was consistent with the intention or purpose of the Zone, but admitted that the proposal did not satisfy PDC8. The latter point was not in dispute between the parties.

On appeal to the Full Court of the Supreme Court the Appellant argued that PDC8 was “categorical” in requiring the traffic works, particularly in light of the location of the proposed development. It submitted that, in the formulation of the Development Plan, PDC8 was a “strategic policy decision” and, as such, should carry more weight in an assessment than other provisions. It was argued that there must be good or strong reasons shown to justify a departure from PDC8. The ERD Court’s departure from PDC8 was not justified by the ERD Court’s conclusion that the proposal “sufficiently complied” with the other provisions of the Development Plan as those were of a lower order of importance. It was argued that the decision of the ERD Court amounted to the ERD Court substituting its view for the planning policy.

The Respondent maintained that no provision of the Development Plan was mandatory and that the ERD Court was at liberty to give reduced, or no, consideration to a particular provision. The Respondent argued that the Appellant had erroneously placed PDC8 on a pedestal as a “condition precedent” to the grant of approval.

The Full Court of the Supreme Court dismissed the appeal in separate judgments and held that in a balanced consideration of planning policy the ERD Court was free to depart from particular provisions if the proposal was generally supported by the Development Plan. PDC8, although providing clear guidance, was not a mandatory provision and one of but a number of relevant PDCs and objectives. It followed that the Development Plan contemplated that a proper planning judgment might involve a departure from PDC8. The appeal was dismissed and the decision of the ERD Court upheld.