



Land and Environment Court
New South Wales

Case Name: Gunlake Quarries Pty Limited v The Minister for Planning

Medium Neutral Citation: [2017] NSWLEC 1342

Hearing Date(s): Conciliation conference on 14, 22, 29 June 2017

Date of Orders: 30 June 2017

Decision Date: 30 June 2017

Jurisdiction: Class 1

Before: Dixon C

Decision: See (4) below

Catchwords: DEVELOPMENT APPLICATION: conciliation conference; agreement between the parties; orders

Legislation Cited: Land and Environment Court Act 1979

Category: Principal judgment

Parties: Gunlake Quarries Pty Limited (Applicant)
The Minister for Planning (Respondent)

Representation: A. Pickles SC (Applicant)
H. Irish (Respondent)

Solicitors:
Corrs Chambers Westgarth (Applicant)
Lindsay Taylor Lawyers (Respondent)

File Number(s): 2017/00108663

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** In this matter, at or after a conciliation conference, an agreement under s 34(3) of the *Land and Environment Court Act 1979* (the Court Act) was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. As the presiding Commissioner, I was satisfied that the decision was one that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the Court Act). As a consequence, s 34(3)(a) of the Act required me to “dispose of the proceedings in accordance with the decision”.
- 2 The Court Act also required me to “set out in writing the terms of the decision” (s 34(3)(b)). The orders made to give effect to the agreement constitute that document.
- 3 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties.
- 4 The final orders to give effect to the parties’ agreement under s34(3) of the Land and Environment Court Act 1979 are:
 - (1) The appeal is upheld.
 - (2) State Significant Development Application no. SSD 7090 (Gunlake Quarry Extension Project) to:
 - (a) extend the quarry footprint of the Applicant's existing quarry at 715 Brayton Road, Marulan;
 - (b) transport no more than 2 million tonnes of quarry products from the site per year;
 - (c) allow additional overburden emplacement to accommodate the increase in production;
 - (d) allow 24 hour per day primary crushing; and
 - (e) allow blasting up to twice weekly,is approved, subject to the conditions set out in Annexure “A” including Appendices 1 to 6.
 - (3) The Court grants liberty to apply to either party on the question of costs arising out of the orders identified in D (1) to (3) above, including liberty to file any “by consent” orders sought to be made by the Court.

The Court notes that the parties are yet to resolve the question of costs arising from orders made by Moore J in the course of the proceedings:

- (1) Order 2 of Moore J dated 1 May 2017 reserving costs in relation to the Applicant's notice of motion for expedition;
- (2) Order 2 of the Short Minutes of Order made by Moore J dated 9 June 2017 reserving costs in relation to the Respondent's notice of motion to vary the subpoena issued to the Planning Assessment Commission (**PAC**) dated 13 April 2017; and
- (3) Order 4 of the Short Minutes of Order made by Moore J dated 7 June 2017 reserving costs in relation to the Respondent's notice of motion to set aside the subpoena to the PAC dated 28 April 2017.

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Commissioner S Dixon

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