

## Extensions to development authorisations – the relevance of extensions granted to other, similar development authorisations.

### *Reffold v Development Assessment Commission (No. 2)* [2012] SAERDC 52

This decision of the ERD Court was recently delivered in an appeal against a decision of the Development Assessment Commission to refuse to extend the life of a development approval for a cabin park at Andamooka.

“The Court found that inconsistent decision-making was a relevant factor to be taken into account when determining this matter.”

In determining whether to grant an extension of time to a development authorisation, the ERD Court will have regard to the following relevant factors:

- 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; and
- any other factors appropriate in the circumstances.

In this particular 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 sought.

The Court found that inconsistent decision-making was a relevant factor to be taken into account when determining this 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, on the face of the matter, 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 actually made an

inconsistent decision. The Court acknowledged that there was likely to be other information specifically relevant to the appellant’s proposed development, on which the DAC based its decision, and which would distinguish the appellant’s application for an extension of time from the other three approvals.

On this basis the Court determined that, whilst the existence of the other extended approvals was a relevant consideration, they could only be of limited weight in the Court’s overall determination.

The Court upheld the DAC’s decision to refuse to extend the life of the development approval.

In making this determination, the Court issued a ‘warning’ to relevant authorities in stating that there is a real danger where the community believes that assessing officers are making inconsistent decisions, that they will develop genuine suspicions about the propriety of the decision-making process. This, in turn, may cause a lack of community confidence in the development approval process.

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This decision provides us with a reminder of the importance of ensuring that decisions made in respect of extensions of time and the reasons behind those decisions, are well-documented especially decisions that are made under delegated authority. If a decision to refuse to extend the operative life of a development authorisation appears to be inconsistently made and there is no evidence to justify this decision, it may be possible that the ERD Court may overturn such a decision on this basis alone.

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