



**IN THE SUPREME COURT OF NEW
SOUTH WALES
SYDNEY REGISTRY
COURT OF APPEAL**

No: 40893 of 2007

**AMENDED NOTICE OF APPEAL
WITH APPOINTMENT**

Filed for Minister for Planning

**MINISTER FOR PLANNING
Appellant**

**JILL WALKER
First Respondent**

**STOCKLAND DEVELOPMENT PTY
LTD (ABN 71 000 064 835)
Second Respondent**

**ANGLICAN RETIREMENT VILLAGES
- DIOCESE OF SYDNEY (ABN 39 922
848 563)
Third Respondent**

IN THE COURT BELOW:

Land and Environment Court of NSW
No. 40240 of 2007

Jill Walker
Applicant
Minister for Planning
First Respondent
Stockland Development Pty Ltd
Second Respondent
Anglican Retirement Villages, Diocese of
Sydney
Third Respondent

Ms Christine Hanson,
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Legal Services Branch,
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The proceedings appealed from were heard on 18 and 19 September 2007, and decided on 27 November 2007.

The Appellant appeals from the decision of Mr Justice Biscoe.

GROUND:

1. His Honour erred in finding that for the purposes of the granting of a concept plan approval pursuant to the provisions of s.75O of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") it was a mandatory relevant consideration that the Minister consider the principles of ecologically sustainable development ("ESD").
2. His Honour erred in finding that for the purposes of the granting of a concept plan approval pursuant to the provisions of s.75O of the EP&A Act it was a mandatory relevant consideration that the Minister consider whether changed weather patterns as a result of climate change would lead to an increased flood risk where flooding was identified as a major constraint on a coastal plain project ("Climate Change Flood Risk").
3. His Honour erred in finding that the absence of specific reference in the Director-General's Environmental Assessment Report to the Climate Change Flood Risk resulted in the inference that the Director-General did not consider Climate Change Flood Risk prior to the issue of the environmental assessment requirements

pursuant to the provisions of s.75F and the Environmental Assessment Report as required by s.75I of the EP&A Act for the reasons that:

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- a. the validity of the Director-General's report was not challenged;
 - b. the finding was not open on the material before him;
 - c. the finding relied upon a reversal of the onus which rested with the challenger.
4. His Honour erred in finding that where the Director-General's report failed to consider Climate Change Flood Risk the Minister was under an independent obligation to consider whether Climate Change Flood Risk was relevant and, if so, to take it into consideration when deciding whether to approve the Concept Plan.
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5. His Honour erred in finding that he could be satisfied that the issue of Climate Change Flood Risk was not so insignificant that the failure to take that matter into account could not have materially affected the decision under s75O of the EP&A Act on the basis that there was no submission to the contrary effect by the Respondents as:
- a. the validity of the Director-General's report was not challenged;
 - b. the finding was not open on the material before him;
 - c. the finding relied upon a reversal of the onus which rested with the challenger.
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6. His Honour erred in construing the reference to "public interest" in clause 8B of the *Environmental Planning and Assessment Regulation 2000* as requiring the Director-General to form an opinion as to what aspects of the principles of ESD (if any) were relevant to the project and, therefore, to be included in the Director-General's Environmental Assessment Report.

ORDERS SOUGHT:

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1. Appeal allowed.
 2. The orders made in the Court below on 27 November 2007 be set aside.
 3. The proceedings in the Court below be dismissed with costs.
 4. The Respondent to pay the Appellant's costs of this appeal and the lower Court proceedings.

TO THE SECOND AND THIRD RESPONDENTS:

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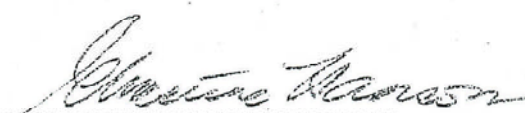
20 Anglican Retirement Villages - Diocese of Sydney
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Before you take any steps in the proceedings you must enter an appearance in the Registry.

30 Place: Court of Appeal Registry
Supreme Court of NSW
Queens Square
Sydney NSW 2000

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(Attention: C Hanson/L McAndrew)

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Christine Hanson, Solicitor for the Appellant
3 April 2008



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