
The Importance of Grampian conditions

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The recent case of *Visionary Investment Group Pty Ltd v Wollongong City Council* [2019] discussed the flexibility of a condition of consent when there is insufficient information provided with the development application.

The case involved a development application for a community title subdivision. During the duration of the proceedings, the applicant filed and produced a wide variety of amended plans/reports in support of its application.

One particular issue for this application was the fact that there was insufficient detail for the 'upstream' impacts of off-site wastewater and water supply infrastructure which needed to be built in order to service the proposed subdivided lots. The design for the wastewater site was not able to be put before the Court, seeing Council argue that the development application could not be granted as these plans needed to be assessed.

Despite this, the applicant argued that under the processes in Division 5.1 of the *Environmental Planning and Assessment Act 1979* the Court has the ability to grant consent based on the fact they are able to give proper consideration and assessment of the 'upstream impacts'. Noting this, the applicant stated that any consent granted could include conditions necessary to ensure that the div 5.1 processes were followed before commencing development.

Typically, conditions of consent must be clear and unambiguous and free from uncertainty. Given the nature of water and wastewater services, Courts have the ability to issue what is known as a **Grampian condition** (*Grampian Regional Council v Secretary of State for Scotland and City of Aberdeen District Council* 1984 S.C. (H.L.) 58) to deal with the uncertainty of the works. A Grampian condition prohibits development from commencing until a specified action is taken on other land (in this instance, the creation of the wastewater station). In this instance, the Court held that the condition should be imposed as an operational condition to be satisfied before a Construction Certificate would be issued. By doing this, the Court enables other aspects of the development (not related to the Wastewater services) to commence.

From this case, we can see the importance of Grampian conditions in enabling the Courts to achieve the fine balance between finality and certainty of a consent on the one hand and flexibility and pragmatism on the other hand. It is also important to note that there are important considerations that need to be given to the context of the application in determining whether or not these types of conditions should be used.