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COURT GIVES GUIDANCE IN RELATION TO LITIGATION FUNDING FOR SUBMITTER APPELLANTS

The Planning and Environment Court is a jurisdiction frequented by self-represented parties. Given the unavoidable expense associated with running an appeal, it is common practice for these parties to finance appeals by fundraising in the local community.

The lawfulness of submitter appellants' fundraising activities was considered in the recent decision of *Friend & Ors v Brisbane City Council and Trentham Holdings Pty Ltd*.

The matter concerns a submitter appeal against the approval of a mixed use development surrounding the Chalk Hotel at Woolloongabba, comprising three residential towers of approximately 500 units and retail facilities.

As part of a preliminary point hearing, the developer alleged that the submitter appellant had contravened section 10 of the *Collections Act 1966* by sending a letter to other submitters (who did not elect to institute an appeal) seeking donations by way of a deposit into a bank account. The developer further submitted that the court should order the relief sought on the basis of its inherent jurisdiction to prevent an abuse of process.

The *Collections Act* regulates public donations for a number of purposes including those for the community. Section 10 of the Act prohibits a person from making or causing to be made, or assisting in making any appeal for support unless that purpose is permitted under the Act. Contravention of this section constitutes an offence punishable by a fine or imprisonment.

The Court held that it was not its role to enforce the *Collections Act* but a matter for the Minister to prosecute the offender.

In making its decision, the Court took public policy considerations outlined in section 5 of the *Sustainable Planning Act 2009* into account. The section states that the Act's purpose is to provide opportunities for community involvement in the decision making process. The Court acknowledged that this includes the opportunity to appeal a decision approving a development application and that the exercise of such a right by a member of the public involves a degree of expense. The right of appeal is illusory unless a person can fund the exercise of that right. It is anticipated that individual members of the community that decide to "take on" the Council and the developer by way of an appeal would seek funding from other like minded members of the community. The Court concluded that this conduct is consistent with modern notions of access to justice.

The Court determined that an order cutting this line of potential litigation funding to the appellant would have a corrupting or prejudicial effect on the proper administration of justice. The court found for the appellant, dismissing the application.

For more information or any enquiries as to what impacts this decision may have on you, please contact Tim Quirk.



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