New South Wales
Court of Appeal

CITATION:	**Those Best Placed Pty Ltd v Tweed Shire Council [2010] NSWCA 309**
HEARING DATE(S):	16 November 2010
JUDGMENT OF:	Allsop P at [1], [11]; Macfarlan JA at [2]
EX TEMPORE JUDGMENT DATE:	16 November 2010
DECISION:	The application for leave to appeal is dismissed with costs. [Note: The Uniform Civil Procedure Rules provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16].
CATCHWORDS:	PRACTICE - leave to appeal refused - no question of principle involved
LEGISLATION CITED:	Environmental Planning and Assessment Regulation Land and Environment Court Act 1979
CATEGORY:	Principal judgment
CASES CITED:	Carolan v AMF Bowling Pty Ltd (t/as Bennett's Green Bowl) [1995] NSWCA 69 Fink v Beaven [2010] NSWCA 92 In the Matter of Luck [2003] HCA 70; (2003) 78 ALJR 177 Tampion v Anderson (1974) 48 ALJR 11
PARTIES:	Those Best Placed Pty Ltd (Applicant) Tweed Shire Council (Respondent)
FILE NUMBER(S):	**CA** 2010/240352
COUNSEL:	A Crowther (Applicant's Agent) J A Ayling SC (Respondent)
SOLICITORS:	A Crowther (Applicant's Agent) HWL Ebsworth Lawyers (Respondent)
LOWER COURT	Land & Environment Court

JURISDICTION:	
LOWER COURT FILE NUMBER(S):	2009/40719
LOWER COURT JUDICIAL OFFICER:	Biscoe J
LOWER COURT DATE OF DECISION:	27 May 2010
LOWER COURT MEDIUM NEUTRAL CITATION:	Those Best Placed Pty Ltd v Tweed Shire Council [2010] NSWLEC 83

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

CA 2010/240352

ALLSOP P
MACFARLAN JA

16 NOVEMBER 2010

THOSE BEST PLACED PTY LTD v TWEED SHIRE COUNCIL

Judgment

1 ALLSOP P: I will ask Justice Macfarlan to deliver the first judgment.

2 MACFARLAN JA: This is an application for leave to appeal against a decision of 27 May 2010 made by Biscoe J of the New South Wales Land and Environment Court ([2010] NSWLEC 83). His Honour ordered that Class 4 proceedings commenced by Those Best Placed Pty Ltd (the applicant in this Court) and Ms Sandra Schultz be dismissed with costs.

3 The applicant seeks leave to appeal to this Court pursuant to s 58(1) *Land and Environment Court Act* 1979. It needs leave to appeal under that section as the primary judge's decision was to dismiss the proceedings upon the basis that no reasonable cause of action was disclosed and the decision was therefore interlocutory (*Tampion v Anderson* (1974) 48 ALJR 11 at 12; *In the Matter of Luck* [2003] HCA 70; (2003) 78 ALJR 177 at [9]).

4 The applicant did not have legal representation at first instance, nor does it have it on the application for leave to appeal. Mr A Crowther, who is the managing director of the applicant, has conducted the proceedings on its behalf.

5 The primary judge observed that the Points of Claim of the applicant and Ms Schultz were lengthy, as were their Written Submissions. His Honour said that "[t]he Points of Claim are

verbose and repetitive, over 100 hundred pages in length and tend to be in the nature of submissions" and that their submissions were "in three volumes and comprise[d] 268 pages" (Judgment [6]). His Honour distilled the material that was before him by summarising the gravamen of the case of the applicant and Ms Schultz as follows:

> "7 Based upon what Mr Crowther told me at the hearing and what I have otherwise been able to glean, his main grievance can be simply stated. He applied, through his builder, for development consent for a shed with a bathroom that he wished to build on the [subject land]. In order to consider the application, the council required him to produce a report demonstrating that sufficient land area and site conditions would exist to cope with the additional use to which the septic tank might be subject as a result of the increase in the facilities attached to it. He refused to provide a report. He thought that if he provided a report it would lead to a council condition of development consent for an upgrading of the existing septic system at a cost to him and Ms Schultz which he estimated would be up to $20,000. Because he refused to provide the report, the council refused the development application. He says that the council's request and refusal were unlawful and so were other related decisions of the council. He says that if the existing septic system has to be upgraded, the council has to pay for it, except for 1/80,000th of the cost, being his estimate of the proportion between the cost of that upgrading on the Land and the cost of the provision of such upgrading in the council's whole local government area".

6 In his judgment of some 48 pages, the primary judge then proceeded to deal clearly and carefully with the various arguments that had been put before him by the applicant and Ms Schultz.

7 I have examined the applicant's Written Submissions filed in support of its application for leave to appeal and have considered the matters that have been put to the Court orally by Mr Crowther but have concluded that none of the matters raised warrants a grant of leave to appeal. None of them in my view raises any matter of principle or of general public importance, or raises any clearly arguable issue, much less one that suggests that any obvious injustice has occurred as a result of the decision at first instance. Consistently with the principles expounded in *Carolan v AMF Bowling Pty Ltd (t/as Bennett's Green Bowl)* [1995] NSWCA 69 and referred to by me in *Fink v Beaven* [2010] NSWCA 92, the application for leave to appeal should in these circumstances be dismissed with costs. It is not appropriate for me to deal with the detail of the applicant's arguments, save that I would mention one matter as follows.

8 A central element of the applicant's case was that the respondent made what the applicant described as an "illegal requirement" that the applicant lodge with the respondent a report concerning the sewerage conditions at the subject site to enable the respondent to consider the applicant's development application. The primary judge held that a request to this effect made by the respondent was justified by clause 54 of the Environmental Planning and Assessment Regulation which provides *inter alia* that "[a] consent authority may request the applicant for development consent to provide it with such additional information about the proposed development as it considers necessary to its proper consideration of the application" (subclause (1)) (Judgment [93]).

9 The primary judge's view about this was plainly correct and the applicant provided no sensible argument in support of a contrary view. The applicant relied upon clause 54(4) of the Regulation (together with the note to that subclause) but that was not established by the applicant to provide any presently relevant qualification to the generality of the provision to

which the primary judge referred.

10 I propose that the application for leave to appeal be dismissed with costs.

11 ALLSOP P: I agree. The orders of the Court are that the application for leave to appeal be dismissed with costs.

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thosebestplaced
Ecologically Sustainable Development

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29 November 2010

The Mayor and Councillors,
Tweed Shire Council,
Civic and Cultural Centre,
Tumbulgum Road,
Murwillumbah, NSW, 2484

Dear Mr Mayor and Councillors,

Winning a Loser's Game

It must be a relief for you to dispense with all that secrecy imposed by sub judice, now that the NSW Supreme Court - Court of Appeal has denied me leave to appeal the decision of Justice Biscoe in the matter of *Those Best Placed Pty Ltd v Tweed Shire Council* [2010) NSWLEC 83. Now we can let the public of Tweed Shire know what you heroes of democracy have been dong with their money.

I note receipt of a letter from Council's solicitors HWLE Ebsworth, politely requesting my consent for immediate release of the $7,000 security deposit I borrowed from my parents in order to challenge Justice Biscoe's judgement, and threatening to spend more public money seeking orders from the court if I do not comply.

I would observe that unlike Tweed Shire, the Supreme Court of NSW does have compassion for the financial hardship Tweed Shire has imposed on me and has deferred some $2,050 in court costs until after the event. I have already invited the NSW Supreme Court to settle their costs from the security deposit, and since they are unable to do that, we will do it this way:

I give my written consent for release of no more than $4,950 from the security deposit to Tweed Shire and seek Council's written consent to the balance of $2,050 being released to the NSW Supreme Court whose debt preceded your own.

If this polite offer has no appeal, why not show the people of Tweed Shire your business acumen and spend another $5,000 to $10,000 on litigation to recover $2,050 by seeking the promised orders from the court. If you do go down this road, I wll look forward again to a demonstration of the NSW Supreme Court's business acumen judging if it will assent to the cost shift from the Shire to the State.

I say this because one of you will be out of pocket. As you know perfectly well from my bank statements, your General Manager has delivered his threat to take my last cash reserves long ago if I did not dance to his tune to fund public works at my expense, and the ensuing insolvency has cost me my home and the vast majority of my life savings. You cannot get blood out of a stone.

On this point, Councillors, I would remind you of my written promise to your GM some two years ago that ***"I believe you have shot yourself and Tweed Shire Council very badly in the foot."***

To put these comments in perspective Councillors, Tweed Shire has currently expended approximately $100,000 on lawyers to defend itself against my allegation that Council has been breaking the law by failing to notify prospective and current septic tank owners of its intention to upgrade those septic tanks at the owner's expense, even if that system is entirely fit for purpose and there has been no negligence or failure in the owner's duty of care.

Tweed Shire could have gifted me five brand new septic tanks for nothing for that price, but instead spent all that public money trying to make me shut up and go away, and you failed. Do your vexatious worst to intimidate and punish me further by attempting to remove the roof from over my head yet again by initiating bankruptcy proceedings to seize my motorhome in an attempt to recover your losses. You will fail again, because there are already enough of my creditors in the queue before Council to ensure Tweed Shire will get nothing more from me.

The winner of a loser's game is a loser, Councillors.

Now we will now find out how many more lives you have ruined by these ambushes on innocent people. I am inviting any of the other 6,000 septic tank owners in the shire who have been placed in financial hardship by Council's heavy handed implementation of the NSW Septic Safe Program to tell their stories on my not for profit public interest website:

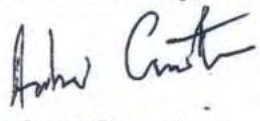
http://www.thosebestplaced.com.au

Membership of the website is free and your constituents can have their say anonymously if they wish.

I never needed to be told of the multi-million dollar consequences for Tweed Shire alone had it been discovered that NSW Councils have been breaking the the law by failing to notify their intentions to do public works at private expense, because Council has done the same thing to thousands more already. Your own Senior Counsel informed me off the record, and before the Court of Appeal's judgment, that it didn't matter how good my case was, my efforts to defend myself against Council's tyranny would fail.

It appears that "Tricky Dicky" Nixon and the Bible were both correct. "***It's not illegal if the President does it***", and "***The love of money is the root of all evil***."

Yours sincerely,



Andrew Crowther
Managing Director, Those Best Placed Pty Ltd