



New South Wales  
Court of Appeal

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**CITATION:** **Sharples v Minister for Local Government [2010] NSWCA 36**

**HEARING DATE(S):** 15 February 2010

**JUDGMENT DATE:** 17 March 2010

**JUDGMENT OF:** Beazley JA at 1; Tobias JA at 2; McColl JA at 128

**DECISION:**

- (a) Grant leave to appeal in respect of Grounds 1 and 2 of the appellant's Amended Notice of Appeal filed on 18 May 2009;
- (b) Dismiss the appellant's appeals against the interlocutory decisions of Biscoe J made on 7 November 2008 and the orders of his Honour made on 30 December 2008 and 29 April 2009;
- (c) The appellant to pay one half of the third respondent's costs of the appeal.

**CATCHWORDS:** ADMINISTRATIVE LAW – Judicial review – Grounds of review – Error of law – Failure to take into account a relevant consideration – Determinations by Minister to increase council's general income – Power of Minister to determine only on application of council made in accordance with applicable guidelines issued by Director-General – Applicable guidelines specified minimum requirements for applications including evidence of community support for proposal and how community was consulted – Requirement of community support and consultation not satisfied – Whether the primary judge erred in not declaring the determinations invalid - ENVIRONMENT AND PLANNING – Courts with environmental jurisdiction – New South Wales – Land and Environment Court – Costs – Public interest – Whether primary judge

erred in dealing differentially with each limb of the appellant's case when assessing costs -  
PROCEDURE – Application for leave to amend points of claim – Application made on fifth day of hearing when evidence virtually closed and after relevant witnesses had been cross-examined – Application to read an affidavit – Application made on third day of the hearing although affidavit had been served two days previously – Applications dismissed by primary judge – Prejudice to respondents – Adverse effect on timely disposal of the proceedings – No explanation for delay – Whether primary judge erred in dismissing applications

**CATEGORY:** Principal judgment

**LEGISLATION CITED:** Civil Procedure Act 2005  
Environmental Planning and Assessment Act 1979  
Land and Environment Court Act 1979  
Land and Environment Court Rules 2007  
Local Government Act 1993  
National Parks and Wildlife Act 1974  
Supreme Court Rules 1970  
Threatened Species Conservation Act 1995  
Uniform Civil Procedure Rules 2005

**CASES CITED:** Aon Risk Services Australia Ltd v Australian National University [2009] HCA 27; (2009) 239 CLR 175  
Barrick Australia Ltd v Williams [2009] NSWCA 275; (2009) 168 LGERA 43  
Bi v Mourad [2010] NSWCA 17  
Botany Bay City Council v Remath Investments No 6 Pty Ltd [2000] NSWCA 364; (2000) 50 NSWLR 312  
Cranky Rock Road v Cowra Shire Council [2006] NSWCA 339; (2006) 150 LGERA 81  
Engadine Area Traffic Action Group Inc v Sutherland Shire Council (No 2) [2004] NSWLEC 434; (2004) 136 LGERA 365  
Gales Holdings Pty Ltd v Minister for Infrastructure and Planning [2006] NSWCA 388; (2006) 69 NSWLR 156  
Helman v Byron Shire Council (1995) 87 LGERA 349  
James & Ors v Surf Road Nominees Pty Ltd & Ors [No 2] [2005] NSWCA 296  
Leichhardt Municipal Council v Minister for

Planning [1992] 78 LGERA 306  
Minister for Planning v Walker (No 2) [2008]  
NSWCA 334  
Oshlack v Richmond River Council [1998] HCA  
11; (1998) 193 CLR 72  
Project Blue Sky Inc v Australian Broadcasting  
Authority [1998] HCA 28; (1998) 194 CLR 355  
Sharples v Minister for Local Government [2008]  
NSWLEC 67  
Sharples v Minister for Local Government [2008]  
NSWLEC 308  
Sharples v Minister for Local Government [2008]  
NSWLEC 328; (2008) 166 LGERA 302  
Sharples v Minister for Local Government (No 2)  
[2009] NSWLEC 62  
Smith v Wyong Shire Council [2003] NSWCA  
322; (2003) 132 LGERA 148  
State of Queensland v J L Holdings Pty Ltd  
[1997] HCA 1; (1997) 189 CLR 146  
Tasker v Fullwood [1978] 1 NSWLR 20  
Timbarra Protection Coalition Inc v Ross Mining  
NL [1999] NSWCA 8; (1999) 46 NSWLR 55

**PARTIES:** Terry Patrick Sharples,  
Minister for Local Government  
Department of Local Government  
Tweed Shire Council

**FILE NUMBER(S):** CA 40089/09

**COUNSEL:** A: Dr A Greinke  
1&2R: Submitting appearance  
3R: C Leggat SC / M D Seymour

**SOLICITORS:** A: Dr A Greinke  
1&2R: Crown Solicitor's Office, Sydney  
3R: Marsdens Law Group, Campbelltown

**LOWER COURT JURISDICTION:** Land & Environment Court

**LOWER COURT FILE NUMBER(S):** L&E 40959/07

**LOWER COURT JUDICIAL OFFICER:** Biscoe J

**LOWER COURT DATE OF DECISION:** 7 November 2008; 30 December 2008; 29 April 2009

**LOWER COURT**  
**MEDIUM NEUTRAL**  
**CITATION:**

Sharples v Minister for Local Government [2008] NSWLEC  
308; Sharples v Minister for Local Government [2008]  
NSWLEC 328; Sharples v Minister for Local Government  
[2009] NSWLEC 62

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## JUDGMENT

### COURT DETAILS

Court District Court of New South Wales  
List Costs Certificates  
Registry Campbelltown  
Case number 2011/ ~~00264828~~ 00264829

### TITLE OF PROCEEDINGS

Plaintiff **TWEED SHIRE COUNCIL**  
  
Defendant **TERRY PATRICK SHARPLES**

### DATE OF JUDGMENT

Date made or given 15 April 2011  
Date entered 20/7/2011

### TERMS OF JUDGMENT/ORDER

Judgement:


TERRY PATRICK SHARPLES, Defendant

is to pay

TWEED SHIRE COUNCIL, Plaintiff

The sum of \$134,058.07

### SEAL AND SIGNATURE

Court seal  
Signature   
Capacity *Dep't Registrar*  
Date *17/8/2011*

### NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

[Include the following section if the document is to be provided to the Registrar for sealing under UCPR 36.12.]

**PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12**

Name	<b>Tweed Shire Council, Plaintiff</b>
Legal representative	David Robert Baird MARSDENS LAW GROUP 49 Dumaresq Street CAMPBELLTOWN NSW 2560 DX 5107 CAMPBELLTOWN Tel: (02) 4626 5077 Fax: (02) 4626 4826 Email: <a href="mailto:gbutterfield@marsdens.net.au">gbutterfield@marsdens.net.au</a>
Legal representative reference	27 34 5700
Contact name and telephone	David Robert Baird, 0246 265 077



[on separate page]

[Include only if more than two plaintiffs and/or more than two defendants and/or any cross-claims.]

**PARTY DETAILS**

**PLAINTIFF'S CLAIM**

**Plaintiff**

Tweed Shire Council, Plaintiff  
Tumbulgum Road  
Murwillumbah NSW 2484

**Defendant**

Terry Patrick Sharples, Defendant  
45 Charles Street  
Tweed Heads NSW 2485

