

Global or local interests? The significance of the Taralga wind farm case

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Introduction

In February 2007 Chief Judge Brian Preston of the Land and Environment Court of New South Wales upheld and expanded the Minister for Infrastructure and Planning's decision to approve a wind farm at Taralga.¹ This decision was the first by an appellate body in Australia which expressly gave priority to global interests in renewable wind energy over local interests. Although of limited precedential value because it was a merits appeal,² the willingness of Chief Judge Preston to embrace the global dimension to climate change makes the case a landmark in Australia's emerging climate law.

Earlier wind farm appeals in Victoria were very different.³ In these cases the familiar contest between local environmental interests and other local (economic and social) values of development were the focus of the decisions of the Victorian Civil and Administrative Tribunal (VCAT). These decisions required a weighing of multiple local interests that was informed by subjective landscape assessments and governed by pre-existing planning controls. While such private and local conflicts are commonplace in environmental and planning law, the express consideration of global interests is much less common.

Although Chief Judge Preston did not refer specifically in the *Taralga* decision to the earlier wind farm appeals (or indeed to much precedent at all), his reasoning still resonates with aspects of the earlier decisions. Like the Victorian cases, the *Taralga* decision involved a consideration of competing local interests. However, unlike the earlier decisions, Chief Judge Preston gave global considerations prominence in his reasoning from the outset. This meant that in the *Taralga* decision the competition between different interests was altered and expanded as Chief Judge Preston

This is a preview. Not all pages are shown.

Notes

- 1 *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59 (*Taralga* decision).
- 2 See further, R Creyke and J McMillan, *Control of Government Action: Text, Cases and Commentary*, LexisNexis Butterworths, Sydney, 2005.
- 3 *Hislop v Glenelg* SC VCAT 1998 (unreported, 1997/88762, 13-15 October 1998) (*Cape Bridgewater* decision) and *Thackeray v Shire of South Gippsland* [2001] VCAT 739 (*Toora* decision).
- 4 A Wawryk, 'The Development Process for Wind Farms in South Australia', *Environment and Planning Law Journal* vol 19, 2002, p 353.
- 5 *Cape Bridgewater* decision, above n 3.
- 6 *Toora* decision, above n 3.
- 7 *Cape Bridgewater* decision, above n 3.
- 8 Above, at 22 of 23.
- 9 *Planning and Environment Act 1987* (Vic), s 60(iii); above, 14.
- 10 *Cape Bridgewater* decision, above n 3, 20 of 23.
- 11 Above, at 16 with 'environmental benefits' also mentioned on pp 21-22.
- 12 This could also be characterised as the environmental benefit of maintaining the landscape.
- 13 *Cape Bridgewater* decision, above n 3, 21-22 of 23.
- 14 Above, at 16.
- 15 Above, pp 10-11.
- 16 Above, p 22.
- 17 Above.
- 18 Above, p 23.
- 19 Above.
- 20 Above.
- 21 *Toora* decision, above n 3, pp 11-12 of 31.
- 22 Above, pp 13-14.
- 23 Above, p 19.
- 24 Above, p 20.
- 25 Above, p 21.
- 26 Above, p 19.
- 27 Above, p 24.
- 28 National Trust listing of the town as 'Taralga Urban Conservation Area'; Church of Christ the King listed in the State Heritage register; and Stonequarry Cemetery, Taralga Courthouse and Taralga war memorial listed on the Commonwealth Register of the National Estate (paras 49-52).
- 29 The *Taralga* decision, above n 1.
- 30 Above, [49], [54].
- 31 Above, [51], [52].
- 32 Above, [116].
- 33 Above, at [117].
- 34 Above, [123].
- 35 Above, [97].
- 36 Above, Development Control Plan – Wind Power Generation 2005 came into existence after the application for the Taralga wind farm was lodged [23].
- 37 The *Taralga* decision, above n 1, [52].
- 38 Above, [50].
- 39 Above, [3].
- 40 Above, [76].

- 41 Above, [67] – [71].
- 42 Above, [138].
- 43 Above, [73]-[74].
- 44 Above, [75]-[78].
- 45 Above, [74]. See also [2].
- 46 For example, [139], [146], [158].
- 47 Above, [352].
- 48 Above, [124].
- 49 Above, [126].
- 50 See further DE Fisher, *Australian Environmental Law*, Thomson Legal and Regulatory, Sydney, 2003, pp 43-45.
- 51 Above.
- 52 Creyke and McMillan, above n 2.
- 53 Above, p 123.