Form 33
Rule 16.32

ORIGINAL

FOSTER J
21/10.

Second Respondent's Defence to the Amended Statement of Claim

No. NSD 924 of 2013

Federal Court of Australia
District Registry: New South Wales
Division: GENERAL

FEDERAL COURT OF AUSTRALIA
N.S.W. DISTRICT REGISTRY
FILED / RECEIVED
18 OCT 2013
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June Yvonne Esposito and others named in the schedule
Applicants

Commonwealth of Australia and others named in the schedule
Respondents

1. In answer to paragraph 1 of the Amended Statement of Claim, the second respondent:

   (a) admits that the first to fifth applicants are the owners of the real property described in the schedule to the amended originating application dated 18 June 2013 (**"Applicants' Land"**);

   (b) admits that the Applicants' Land is located in an area frequently referred to as "*the Heritage Estates site*";

   (c) admits that the Applicants' Land falls within the area covered by the Jervis Bay Regional Environmental Plan and the Shoalhaven Local Environment Plan, made by the third respondent; and

   (d) otherwise does not know and cannot admit the allegations made therein.

2. In answer to paragraph 2, of the Amended Statement of Claim the second respondent:

   (a) says that at all relevant times the land within the Heritage Estate sites has been zoned Rural (1)(b) and Rural (1)(d) and that the zoning did not permit residential development;

   (b) admits that as at 7 May 2007, the third respondent was proposing to rezone and undertake public infrastructure works within the Heritage Estates site so as to permit residential development of a maximum of 730 of the 1,232 registered lots within that site (the **"Rezoning Proposal"**);

   (c) says that the Rezoning Proposal was a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act* 1990 (Cth);

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(d) admits that on 13 March 2009, Peter Robert Garrett, the Minister for the Environment, Heritage and the Arts refused to approve the Rezoning Proposal under Part 9 *Environment Protection and Biodiversity Conservation Act* 1999 (the **"Decision"**);

(e) admits that the Decision impacted upon the market value of at least the 730 registered lots within the Heritage Estates site upon which residential development would have been permitted had the Rezoning Proposal been approved;

(f) admits that on or about 12 June 2012, it entered into a funding agreement with the first respondent in relation to the provision of funding by the first respondent for the voluntary purchase of lots within the Heritage Estates site (the **"Funding Agreement"**);

(g) admits that pursuant to Clause 6.5(d)(ii)(A) of the Funding Agreement, the second respondent agreed not to provide funds to the fourth respondent until the third respondent had agreed in writing to rezone the Heritage Estates as Environmental Protection 2 (**E2**) under the Shoalhaven Local Environmental Plan.

(h) admits that the third respondent has resolved to rezone land within the Heritage Estates site to E2 – Environmental Conservation; and

(i) otherwise denies the allegations made therein.

3. In answer to paragraph 3, the second respondent:

(a) admits that the fourth respondent has made an offer to purchase lots within the Heritage Estates site (**"the Offer"**);

(b) admits that approximately 512 owners of registered lots within the Heritage Estates site have accepted the Offer;

(c) admits that the lots referred to in (b) above and any other lots sold pursuant to the Offer will be transferred to the New South Wales Minister for the Environment and added to Jervis Bay National Park to be managed by the NSW National Parks and Wildlife Service;

(d) says that the purchase price contemplated by the Offer is substantially in excess of the current market value of lots within the Heritage Estates; and

(e) otherwise denies the allegations made therein.

4. In answer to paragraph 4 of the Amended Statement of Claim, the second respondent:

(a) refers to and repeats the matters pleaded in answer to paragraphs 2 and 3 of the Amended Statement of Claim; and

(b) otherwise denies the allegations made therein.

5. In answer to paragraph 5 of the Amended Statement of Claim, the second respondent:

(a) admits that, pursuant to section 519 *Environment Protection and Biodiversity Conservation Act*, if the Decision resulted in an acquisition of property from the

owners of lots within the Heritage Estates site, the first respondent is obliged to pay reasonable compensation to those individuals;

(b) says that pursuant to section 519(4) *Environment Protection and Biodiversity Conservation Act*, any money received by owners or former owners of lots within the Heritage Estates consequent upon acceptance by them of the Offer must be taken into account in assessing the compensation (if any) payable under section 519;

(c) denies that the Decision resulted in an acquisition of property; and

(d) otherwise denies the allegations made therein.

6. In answer to paragraph 6 of the Amended Statement of Claim, the second respondent:

(a) refers to and repeats the matters pleaded in answer to paragraphs 2 and 3 of the Amended Statement of Claim; and

(b) otherwise denies the allegations made therein.

~~7. In answer to paragraph 7 of the Statement of Claim, the second respondent:~~

~~(a) admits that on or about 12 June 2012, it entered into a funding agreement with the first respondent in relation to the provision of funding by the first respondent for the voluntary purchase of lots within the Heritage Estates site (the **"Funding Agreement"**);~~

~~(b) otherwise denies the allegations made therein.~~

~~8. The second respondent denies paragraph 8 of the Statement of Claim.~~

9. In answer to paragraph 9 of the Amended Statement of Claim, the second respondent:

(a) refers to and repeats the matters pleaded in answer to paragraph 3 of the Amended Statement of Claim; and

(b) otherwise denies the allegations made therein.

~~10. In answer to paragraph 10 of the Statement of Claim, the second respondent:~~

~~(a) admits that it is represented by members of the steering committee described in Annexure A to the Funding Agreement;~~

~~(b) admits that on or about 31 October 2012 the fourth respondent sent the Offer to owners of lots within the Heritage Estates site;~~

~~(c) admits that the fourth respondent has sent further correspondence to owners of lots within the Heritage Estates site regarding the Offer;~~

~~(d) admits that the fourth respondent represented to owners of lots within the Heritage Estates site that the purchase price contemplated by the Offer was designed to be a fair and reasonable price for their land, taking into account its market value;~~

~~(e) says that the purchase price contemplated by the Offer was designed to be a fair and reasonable price having regard to the fact that it is substantially in excess of the current market value of lots within the Heritage Estates site;~~

~~(f) admits that the fourth respondent represented to holders of lots within the Heritage Estates site that they had no grounds for compensation arising out of their continuing ownership of those lots;~~

~~(g) says that, having regard to the matters pleaded in answer to paragraphs 2 to 9 of the Statement of Claim, holders of lots within the Heritage Estates site have no grounds for compensation in relation to their continuing ownership of those lots;~~

~~(h) admits that the Offer was to close at 5pm on 3 June 2013;~~

~~(i) says that on 31 May 2013 the first respondent extended the Funding Agreement to 31 December 2013; and~~

~~(j) otherwise denies the allegations made therein.~~

~~11. In answer to paragraph 11 of the Statement of Claim, the second respondent:~~

~~(a) refers to and repeats the matters pleaded in answer to paragraph 10 of the Statement of Claim; and~~

~~(b) otherwise denies the allegations made therein.~~

~~12. The second respondent denies paragraph 12 of the Statement of Claim.~~

~~13. The second respondent denies paragraph 13 of the Statement of Claim.~~

14. In answer to paragraphs 11 ~~14 and 15~~ of the Amended Statement of Claim, the second respondent denies that the applicants or any owner or former owner of a lot or lots within the Heritage Estates site is entitled to the relief claimed or any relief from the second respondent.

Date: 17 October 2013

Signed by

Rasheed Sahu-khan
Lawyer for the Second Respondent

Certificate of lawyer

I, Rasheed Sahu-khan, certify to the Court that, in relation to the defence filed on behalf of the Second Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 17 October 2013

Signed by Rasheed Sahu-khan
Lawyer for the Second Respondent

Schedule

No. NSD 924 of 2013

Federal Court of Australia

District Registry: New South Wales

Division: General

Applicants

Second Applicant: Margaret-Anne Hutton

Third Applicant: Daniel Walter Massaioli

Fourth Applicant: Sam De Maria

Fifth Applicant: Brian George Edward Smith

Respondents

Second Respondent: State of New South Wales

Third Respondent: Shoalhaven City Council

Fourth Respondent: Foundation for National Parks and Wildlife