

SEKISUI/YAROOMBA SUPREME COURT APPEAL UPDATE NO 5



The Judgment handed down on 9 February 2022 states there were 3 errors of law –

First, no specific finding about the **local community's expectations regarding height**.

Second, although the planning scheme may be regarded as a prima facie expression of what will constitute, in the public interest, the appropriate development of the land, there was in this case a **credible source of evidence as to the expectations of the local community, and a substantial one at that**. Indeed, **the body of material from the local community** in the form of submissions following the public notification process **along with the evidence given at the hearing by residents** may properly be regarded as the **most direct expression of the expectations** properly made submissions about the development formed part of the common material and, as such, **the assessment was required to be carried out having regard to them**. The Judge overlooked the need to first determine what the expectations of the local community were concerning the height and **the court was required to take that evidence into account as part of the common material but that did not occur**.

Third, the primary judge **had no regard to the version of the planning scheme current at the time of the appeal**. Version 18 not only required the height of buildings and structures to be consistent with the reasonable expectations of the local community, **it mandated compliance with the specified height limits, that is to say, 8.5 metres**.

Conclusion

The judgment below was affected by the three errors of law identified above ... **they could have materially affected the decision at first instance**.

Orders

1. Grant leave to appeal.
2. Allow the appeal.
3. **Set aside the decision of the Planning and Environment Court made on 15 June 2020 in Appeal No. D166 of 2018 to dismiss the appeal and to approve the development application, subject to conditions**.
4. The parties are directed **to file and serve written submissions (not to exceed five pages)** regarding:
 - a. **the terms on which each contends the case should be remitted to the Planning and Environment Court** to be determined **according to law**; and
 - b. the appropriate **order as to costs**.