



Our Ref: W2004/21

31 August 2004

Urban Bushland Council WA Inc  
Attn: Renata Zelinova  
PO Box 326  
WEST PERTH WA 6872

Minister for Transport & Regional Services  
Attn: Teresa Ling  
c/- Australian Government Solicitor  
GPO Box U1994  
PERTH WA 6001

Dear Madam

**APPLICANT: URBAN BUSHLAND COUNCIL WA INC**  
**RESPONDENT: MINISTER FOR TRANSPORT AND REGIONAL SERVICES**

I enclose a copy of the decision and reasons of the Tribunal in the above application under section 43(3) of the *Administrative Appeals Tribunal Act 1975* (the Act). As the application cannot proceed, the applicant's application fee will be refunded in due course.

There is a limited right to appeal this decision to the Federal Court under section 44 of the Act. The right to appeal is limited to determining whether the Tribunal made an error of law in reaching its decision. An appeal to the Court must be lodged not later than 28 days after a copy of the decision is furnished to you. The Court may extend the time to appeal. An appeal is to be commenced in accordance with O 53 Rule 5 of the Federal Court Rules.

A filing fee of \$1,148.00 must be paid in order to lodge an appeal in the Court. An application for waiver of the fee, however, may be made to the Court on the grounds of financial hardship. The address of the Court's Registry in your State is:

Level 6, Commonwealth Law Courts Building, 1 Victoria Avenue, PERTH WA 6000

Yours sincerely

**Valerie Wong**  
**Members' Support**

**ORAL REASONS FOR DECISION (edited)**  
**ADMINISTRATIVE APPEALS TRIBUNAL**  
**MATTER NO W2004/21**  
**By DEPUTY PRESIDENT S.D. HOTOP**  
**URBAN BUSHLAND COUNCIL WA INC and MINISTER FOR**  
**TRANSPORT AND REGIONAL SERVICES**  
**PERTH, 19 AUGUST 2004**

[4.13pm]

O/N 827

THE D.PRESIDENT: Now, this application has been on foot, I think, for some 7 months already and we're still talking about standing. I mean, we haven't really progressed very far in terms of bringing this matter forward because, obviously, the question of standing, as I said at the outset, is a fundamental one and of course must be determined if it is an issue. But 7 months have gone by and it still hasn't been determined. If I were to reserve my decision, realistically a number of more months would go by before that decision was handed down so I'm actually going to make a decision now and I hope it won't be thought by the parties that I'm acting precipitately in doing this.

The fact of the matter is, we did have a hearing some time ago, some months ago. Submissions on standing had been filed prior to that. I had given them careful consideration at that stage. I've since given them further careful consideration and I've heard the oral submissions today and, of course, I've been following those carefully as we've been going along and, essentially, I think I'm now in a position where I can express a firm view on this matter. I'm not in a position at this stage to give full reasons. I will give brief oral reasons. It may well be that they will suffice but I certainly haven't prepared any substantial draft of reasons.

The decision to which I've come is that the applicant does not have standing. So, I am going to dismiss the application, and I do that without, in any way, disparaging the credibility and status of the applicant. I accept everything that was in Mr Greenwood's affidavit in relation to the applicant – it is obviously a peak environmental and conservation body. The respondent didn't dispute that. It is obviously a very important, responsible environmental body in this State. And, Mr Walker, you made some very useful submissions in relation to standing, in relation to bodies such as this, and were this an application by UBC for a remedy under the general law of standing, then I think you might have been - without committing a view on that – on reasonably strong ground. There was a recent decision which was filed by the applicant, the *Save the Ridge* case [2004] ACTSC 13, which is the kind of case I'm referring to, where the special interest test in the *Australian Conservation Foundation* case was applied and that test has been applied under the general law in subsequent cases but, of course, we're not in that situation. We're dealing here with the question of standing under the AAT Act but, perhaps more to the point, we're

dealing with standing to seek review of a decision under the *Airports Act*, that of course being the Act which confers the jurisdiction on the Tribunal in relation to certain decisions under that Act, and that is in section 242.

Essentially, the reason that I have come to the conclusion that I have is because I accept the submissions that Mr Macliver has made in relation to the intention of Parliament regarding the person or persons who would have standing to seek review by the Tribunal of a decision of the Minister to approve a major development plan or, indeed, to reject a plan or, as in this case, to approve a plan subject to conditions. I accept Mr Macliver's submissions that the intention of Parliament, having regard to the subject matter, scope and purpose of that Act, is that standing is to be confined generally to the relevant airport lessee body in question and not to be granted to third parties – even to bodies such as the UBC.

So, essentially, I adopt the substance of Mr Macliver's submissions and I adopt those as my reasons and, for those reasons, I come to the conclusion that the applicant does not have standing under section 27(1) of the AAT Act because in my opinion, having regard to those considerations in relation to the *Airports Act*, UBC is not a person whose interests are affected, within the meaning of section 27(1) of the AAT Act, by the Minister's decision in this case. I also – even though I agree with you, Mr Walker, that the *Brisbane Airport* case is not binding on me – accept Mr Macliver's submission that the dicta of Dowsett J in that case are apposite in the present case. And I know you sought to distinguish that case but it seems to me that in substance the comments that Dowsett J made in that case are apposite in the present case and that fortifies me in the decision that I've reached in this case in relation to section 27(1) of the AAT Act.

Section 27(2), I think, is a bit more problematic because that is the subsection which appears on its face to take a wider approach to standing in the case of interest groups:

*An organisation or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organisation or association.*

And, of course, the objects of UBC are in evidence and Mr Walker referred to them and in particular referred to the first object:

*To promote the recognition and conservation of urban bushland.*

On one view it might be said that if to grant standing to UBC under section 27(1) of the AAT Act was not in accordance with Parliament's intention, as reflected in the *Airports Act*, it would be inconsistent for the Tribunal then, if you like, by the back door to grant standing to UBC under section 27(2). It

may well be that that is the proper approach to section 27(2), to say that subsection (2) should be read down so as to accord with Parliament's intention regarding standing.

But, in any event, I accept Mr Macliver's alternative submission in relation to that matter, and that is that, nevertheless, the relevant decision in this case – the decision of the Minister to approve the plan with conditions – is not a decision that relates to any matter included in the objects or purposes of UBC.

The reason I say that is because the decision is quite a specific one, as I've indicated, a specific decision by the Minister under section 94(2) and (7) of the *Airports Act*. Turning to the objects of UBC, they're very broad. The first of them is extremely broad:

*To promote the recognition and conservation of urban bushland.*

I'm not prepared to go so far as to say that there is absolutely no relationship between the Minister's decision and those objects but what I do say is that any such relationship is of far too general, insubstantial and tenuous a nature to give standing under section 27(2) of the AAT Act. So, for that reason also I would hold that UBC does not have standing under section 27(2) of the AAT Act.

I think that is probably as far as I need to go. So, for those reasons I decide that UBC does not have standing to maintain this application for review and for that reason its application must be dismissed. And that of course means that the other matters that have been raised, namely, dismissal under section 42B and a request for a stay order, fall away and need not be determined.

ADMINISTRATIVE APPEALS TRIBUNAL }  
GENERAL ADMINISTRATIVE DIVISION } N° W2004/21

Re: URBAN BUSHLAND COUNCIL  
WA INC

Applicant

And: MINISTER FOR TRANSPORT  
AND REGIONAL SERVICES

Respondent

### DECISION

Tribunal : Associate Professor S D Hotop, Deputy President

Date : 19 August 2004

Place : Perth

The Tribunal decides that:

- (a) for the purposes of s 27(1) of the *Administrative Appeals Tribunal Act 1975 (Cth)* ("the AAT Act"), the interests of the applicant are not affected by the decision of the respondent, dated 14 November 2003, to approve a draft major development plan subject to conditions, pursuant to s94(2) and s94(7) of the *Airports Act 1996 (Cth)* ("the decision"); and
- (b) for the purposes of s27(2) of the AAT Act, the decision does not relate to a matter included in the objects or purposes of the applicant.

*Accordingly, the Tribunal does not have jurisdiction to determine the applicant's review application to the Tribunal under s27(1) of the AAT Act.*