

Judgment Summary

Supreme Court
Australian Capital Territory
Court Of Appeal

ACT v Higgins [2026] ACTCA 38

McCallum CJ, Mossop and Baker JJ

The Court of Appeal has allowed two appeals and dismissed a cross-appeal from a decision concerning an alleged equitable scheme of development arising over land that was a part of the Harcourt Hill Estate development in the suburb of Nicholls.

The primary judge held that a scheme of development existed which required the Australian Capital Territory, its assigns and agents to give effect to a covenant that the golf course land in the former Harcourt Hill Estate be restricted to use only for the purpose of a golf course, purposes ancillary to the golf course, and purposes otherwise allowed by the Crown lease. The Territory and Gungahlin Golf Investments Pty Ltd (the present holder of the Crown lease over the golf course) separately appealed from the decision. Ms Higgins (a leaseholder of a block within the former Harcourt Hill Estate and the plaintiff in the proceedings below) cross-appealed, contending that the scheme of development also bound Gungahlin Golf Investments Pty Ltd.

The Court of Appeal considered the requirements for establishing an equitable scheme of development, referring particularly to the case of *Elliston v Reacher* [1908] 2 Ch 374. In doing so, the contention that an equitable scheme of development enforcing restrictive covenants could arise directly from a community of interest was rejected. The Court further considered the relevance of the history of statutory planning controls in the Territory to the application of the doctrine of equitable schemes of development.

The Court concluded that there was no intention on the part of the Territory, the ACT Planning and Land Authority, the developers of the Estate, nor Ms Higgins to establish an equitable scheme of development which would incorporate restrictive covenants requiring that the golf course land only be used for the purpose of a golf course and certain other purposes. Intention having not been established, the Court held that no scheme of development existed over the golf course land in the terms described by the primary judge.

For that reason, the Court allowed the appeals and dismissed the cross-appeal.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.

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