

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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EDITORIAL COMMENTARY

Federal issues: appeal lodged from Greentree (no 3).5

STATUTORY PLANNING APPROACHES FOR AFFORDABLE AND SOCIAL HOUSING PROVISION: A COMPARISON OF RECENT AUSTRALIAN AND IRISH EXPERIENCE

Peter Williams

There have been two significant attempts in recent years to use the statutory planning system to increase the supply of “affordable housing” in Sydney. Specifically, these schemes have relied on the utilisation of an inclusionary zoning mechanism mandated under delegated legislation created under the *Environmental Planning and Assessment Act 1979*. This approach has generally been resisted by the development industry and, despite some ongoing commitment by several local councils in Sydney, has now apparently fallen into disfavour with the New South Wales State Government. This supply side ‘tactical’ response may be contrasted with the more strategic approach for affordable and social housing provision adopted in Ireland via Part V (Housing Strategies) of the *Planning and Development Act 2000*. Nonetheless, both approaches have experienced their difficulties and, to the extent that they represent a degree of public policy failure, call into question government efforts to assist in the maintenance of an adequate supply of low cost/affordable housing.7

KEY CONCEPTS OF THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 (CTH)

Chris McGrath

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) provides an overarching federal umbrella for environmental decision-making in Australia. The Act contains many complex and novel legal concepts, the interpretation of which dramatically enlarge or constrain the nature and width of its application in practice. Key concepts such as “action”, “existing lawful use”, “likely to have”, “significant impact”, and “all adverse impacts” are central to the operation of the Act. A number of these concepts have received important judicial consideration by the Federal Court of Australia. The aim of this article is to explain these key concepts in light of the developing case law.20

CHALLENGES FOR THE MANAGEMENT OF WATER RESOURCES IN WESTERN AUSTRALIA: A LEGAL RESPONSE TO FINDINGS OF THE PUBLIC SECTOR PERFORMANCE REPORT, 2003

Andrew Roberts and Alex Gardner

In September 2003, the Auditor General of Western Australia released a report concerning the performance of the Water and Rivers Commission (Commission) in a number of key areas relating to its responsibilities as Western Australia's principal agency for managing the State's water resources. The Auditor General's report (Audit Report) identified a number of "major challenges" confronting water resources management in Western Australia. These challenges arise in relation to water resources investigation and assessment, water resources planning and the licensing and regulation of the taking and use of water resources. This article examines the concerns raised in the Audit Report, considers the implications for water resources management in Western Australia and examines the extent to which the challenges result from limitations imposed by the *Rights in Water and Irrigation Act 1914* (WA)..... 40

INNOVATIVE ECONOMIC MECHANISMS FOR ADDRESSING AGRICULTURAL NON-POINT SOURCE WATER POLLUTION

Simon Gordon

A complex array of physical, economic, political and institutional barriers currently lie between theoretically appealing textbook economic prescriptions for addressing agricultural non-point source water pollution, and their transition into successful real-world solutions. In this paper, two innovative economic mechanisms that offer to partially overcome these barriers, and address agricultural non-point source water pollution in an efficient, effective, equitable and politically acceptable manner, are presented - auctioned best management practice payments and best management practice incentive charges. The potential of these two mechanisms is explored in the context of the Swan-Canning catchment in Perth, Western Australia. 55

THE ENFORCEMENT OF POLLUTION CONTROL LAWS IN ENGLAND AND WALES: A CASE FOR REFORM?

Carolyn Abbot

In England and Wales, serious doubts are being raised about the Environment Agency's enforcement of pollution control laws. Most criticism has been directed at the current array of administrative enforcement instruments and criminal sanction, both of which are seen as inadequate and ineffective in tackling those who breach environmental standards. The time is therefore ripe for reform. Drawing on the Australian experience, the enforcement toolbox should be expanded, thereby enabling the Agency and the courts to tailor any enforcement response to the particular circumstances of the case. 68

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Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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