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ARTICLES

Emergence of the Soil Conservation Act 1938 (NSW): The Origins of a Co-operative and Voluntary Regulatory Approach to Landcare on Private Land 1884–1938 – *Judith S Jones*

Soil conservation is an important environmental and natural resource issue affecting private land in Australia. The focus of the Soil Conservation Act 1938 (NSW) was the urgent remediation of the water-induced sheet and gully erosion of agricultural land on the slopes and tablelands to the west of the highest points of the Great Dividing Range in New South Wales. The origin of the voluntary regulatory approach, which was formalised in soil conservation legislation in the late 1930s and then largely retained by the modern Landcare movement, can be traced to the 1890s. This article examines not only those policy origins but also the more contemporaneous catalysts during the 1930s that led to the enactment of this significant legislation. 5

Adapting to a Sustainable Energy Future – Part 2: Regulating Wind Energy Development under the NSW Planning Law Regime – *Brian J Preston and Tristan Orgill*

The Australian energy sector is undergoing a significant transition towards renewable energy. Part 1 of this article focused upon the contribution of small-scale solar photovoltaic electricity generating systems to this shift in the energy sector. Part 2 focuses upon the predicted significant increase in the electricity generated by large-scale wind energy infrastructure. The New South Wales planning law regime (regime) will play an important role in either facilitating or restricting this expansion of wind energy. Thus, Part 2 of this article critically examines whether the regime is well equipped to both encourage efficient decision-making with respect to proposed wind energy development, and ensure a sufficiently rigorous consideration of the potential adverse social, economic and environmental impacts of such development. While it is recognised that the regime could be more efficient, it is argued that the regime is adequately structured to encourage informed and judicious decision-making. In particular, the regime assists consent authorities to, in accordance with the principle of good governance, properly assess and consider one of the most challenging potential adverse impacts of proposed wind energy developments: their visual impacts. However, it is cautioned that any reforms proposing to constrain the decision-making freedom of consent authorities to consider and determine wind energy development applications should be consistent with the principle of good governance. 26

Suggested Improvements to the Australian Environmental Impact Assessment Process to Benefit Marine Megafauna – *Rachel A Groom, Kerry M Neil and Helene D Marsh*

Performance of the Environmental Impact Assessment (EIA) process is often perceived to be flawed. Testing the process requires investigation of core environmental legislation, regulation and a review of outcomes following an EIA, all of which are rarely undertaken. We use recent coastal development assessments in Australia to complete such a review focusing on the current Commonwealth impact assessment process and its ability to effectively manage risk for protected marine megafauna (turtles, dugongs and coastal dolphins). A range of factors are examined including data sufficiency, project and proponent constraints, knowledge of marine megafauna ecology and relevance of applied monitoring techniques. Challenges associated with identifying measures for effective protection are discussed with changes suggested to the assessment process to achieve an improved conservation goal and supporting truly sustainable development.

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Moving from Confusion to Cohesion: An Analysis of the Legislative Framework of Wetland Conservation in Western Australia – *Toby Nisbet, Vic Semeniuk, Chris Semeniuk and Margaret Brocx*

This article considers environmental legislation in relation to wetlands. The focus on wetlands is useful because there are so many components to these ecosystems – such as their geomorphology, their hydrology and hydrogeology, their botany, the soil science, and the habitats they provide for fauna. For each aspect of a wetland, there is a different statute driven by different policy considerations that regulates or impacts on that aspect. A focus on avifauna, for instance, results in different emphases to those where there is a focus on flora. Because there are so many components to wetlands, they provide a unique window into the fractured world of Western Australian environmental statutes, where the definitions vary subtly in some Acts, and significantly in others. There is clear scope for statutory reform to align wetland definitions. This article submits that the global “geomorphic-hydrologic” classification systems of inland and coastal wetlands provide the most cogent and cohesive basis for reform. This classification adequately forms a template for wetland research and management for hydrology, hydrogeology, hydrochemistry, soils and sediments, vegetation and fauna.

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Coastal Climate Change and Transferable Development Rights – *John Sheehan, Andrew H Kelly, Ken Rayner and Jasper Brown*

Coastal Australia is particularly vulnerable to increasingly frequent violent storm events coupled with anticipated rise in sea level. Consequent risks starkly underscore crucial coastal land policies and statutory planning documents. However, current questioning in the State of New South Wales (NSW) of such public instruments has uncovered a critical link between flood risk mapping and land-use planning, property values and, in particular, inundation propensity of various coastal lands. A range of coastal properties will no longer be capable of meaningful utilisation, coalescing in an impending collision between settled Australian property law and property rights. The use of transferable development rights (TDRs) to achieve climate change adaptation and risk amelioration is a planning tool which this article explores as part of the compendium of tools to deal with increasingly impacted coastal lands. The potential of TDRs is canvassed in a case study on a fragile suburban beach, namely Collaroy, in northern Sydney.

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Sustainable Development – A Review – Serge Killingbeck

This article is a review of the current state of sustainable development law and policy in Australia, more commonly referred to as ecologically sustainable development in domestic legislative regimes. The article explores both domestic and international perspectives and is based on the pretext that any successful transition to a genuinely sustainable society will require not only an understanding of where society needs to go but also an understanding of where it has come from. The article investigates influences that have contributed to the current state of sustainable development and contemplates the impact those same influences may have on any efforts change the direction of the legal and policy regimes. It recognises the role that politics has played and continues to play in sustainable development policy. In particular, it investigates criticisms and critiques of current approaches to sustainable development from commentators and the judiciary. 102

