LOCAL GOVERNMENT LAW JOURNAL

Volume 14, Number 2

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CASENOTE

Through the eye of a needle 75

POLICY AND PRACTICE

National 79

ARTICLES

The Trees (Disputes Between Neighbours) Act 2006 – background and operation – *Hon Justice Brian J Preston* and *Commissioner Tim Moore*

On 2 February 2007, the Trees (Disputes Between Neighbours) Act 2006 (NSW) came into effect and vested an entirely new jurisdiction in the Land and Environment Court of New South Wales. The purpose of this article is to set out the background to the legislation and provide an overview of its operation in the Land and Environment Court of New South Wales during the first year and a half since its entry into force. 84

Are you immune from liability? Councillors' & council officers' personal liability – *Stephen Britten*

This article discusses legal issues surrounding liability, focusing on the liability of councillors and council officers. It discusses the development in the law arising from a High Court decision in the matter of Ghantous v Hawkesbury City Council (2001) 206 CLR 512, in which the court defined the liability of road authorities and discussed negligence generally with respect to public authorities. The article also considers councillor and council officer immunity under the Local Government Act 1993 (NSW), potential criminal liability (including Occupational Health and Safety liability), investigations by the Independent Commission Against Corruption, and the surcharging provisions of the Local Government Act 1993 (NSW). The final part of the article discusses the approach that council officers and councillors are taking to limit the potential for their liability. 100

Jurisdictional error: An alternative approach – *Ian Ellis-Jones*

In judicial review proceedings, under the general law on the ground of traditional jurisdictional error, the reviewing court ordinarily makes a distinction between jurisdictional errors of law on the one hand and non-jurisdictional errors of law on the other. The esoteric distinction between jurisdictional and non-jurisdictional errors of law no longer serves any useful purpose. However, not all errors of law are equally serious. The Anisminic doctrine of extended jurisdictional error is not the answer because it tends to treat all errors of law as being equally serious, which clearly they are not. What is needed is a realistic yet honest approach to judicial review, in which the reviewing court would enquire as to whether or not the particular decision, or the view of the law made by the inferior court or tribunal, could be rationally supported on a construction which the

empowering legislation may reasonably be considered to bear. 109

Revolution in the West: The transformation of planning appeals in Western Australia – *David Parry*

Planning appeals have been subject to revolutionary transformation in Western Australia during the first years of the new millennium. For more than 70 years, planning appeals were determined solely or principally by the Minister for Planning; however, in recent years, the ministerial appeal system has been abolished, planning appeals have been incorporated into a cohesive administrative review jurisdiction, and practices and procedures have been developed to achieve quick, just, flexible and proportionate resolution of planning appeals, with minimum costs to the parties. Most significantly, over the last three years a cultural change has taken place, under which facilitative dispute resolution is at least as important as traditional decision-making. This article traces the history of Western Australian planning appeals through the ministerial and dual ministerial and court or tribunal systems, and describes the significant developments that have occurred in recent years. 119

Amendments to the New South Wales planning system – sidelining the community – *Robert Ghanem*

Major changes to the New South Wales planning system have been introduced through the Environmental Planning and Assessment Amendment Act 2008 (NSW) and cognate legislation. This article provides an overview of the changes relating to plan-making, development assessment, exempt and complying development and private certification. Major changes include a new "gateway" system for plan-making, the establishment of State and regional planning panels as consent authorities for various categories of development, new appeal and review mechanisms and standardised State-wide complying developing codes. This article summarises these changes, and also analyses the extent to which the reforms impact on environmental assessment processes and the ability of the community to participate in the plan-making regime. The central finding of this article is that the reforms signal a profound departure from the 1979 Environmental Planning and Assessment Act's founding principles, with public participation and the environment relegated to the sidelines as a result of the government's push to "streamline" the planning system and expedite assessment processes. 140

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