

LOCAL GOVERNMENT LAW JOURNAL

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ARTICLES

High Court reinforces private land owners' rights – *Maureen Peatman*

Councils throughout New South Wales have wide powers of compulsory acquisition for the purpose of exercising any of their functions. The legislature put a fetter on councils' power of compulsory acquisition: councils may not acquire land by compulsory process without the approval of the owner of the land if it is being acquired for the purpose of resale. The question then turns on the meanings of "sale" and "purpose" in dealing with complex agreements. This article reviews two cases that were ultimately determined by the High Court, which held Parramatta Council's proposed compulsory acquisitions of land to be unlawful, thus upholding private landowners' rights. The article also reviews the subsequent legislative amendments by the New South Wales Parliament, which were promulgated to overcome the decision of the High Court. 80

Should private property rights trump the public interest in renewal of the urban environment? – *Clifford Ireland*

Environmental planning law is about regulating the use of land in the public interest. Accordingly, there is a tension between the common law presumption of statutory interpretation protecting private property rights and this objective of environmental planning law. The decision of the High Court of Australia in *R&R Fazzolari Pty Ltd v Parramatta City Council*; *Mac's Pty Ltd v Parramatta City Council* (2009) 165 LGERA 68 highlights this tension and resolves the dispute in issue in that case in favour of private property rights rather than land-use planning in the public interest. This article discusses the balance struck between private property rights and the wider public interest in the decisions of the New South Wales Land and Environment Court, the New South Wales Court of Appeal and the High Court. 86

The importance and nature of the presumption in favour of private property – *Glen McLeod and Angus McLeod*

Despite the increasing volume of written law, the common law principles that property cannot be taken by the state without just compensation and that it is presumed that Parliament did not intend to interfere with property rights unless clear words to that effect are used, remain of fundamental importance. Their role should not be underestimated, and their particular place within our system of law must be properly understood, especially within the context of the developing areas of town planning and environmental law. In

particular, it is misguided to suggest that there should be a “public interest” exception applicable to planning and environmental law. On the contrary, it is in the public interest that Parliament be truly an accountable body; it must act with transparency and only be permitted to infringe private rights by clear, specific legislation. 97

The effects of the New South Wales planning reforms on developers, public participation and the role of the Land and Environment Court – Amanda Kiely

The *Environmental Planning and Assessment Amendment Act 2008* (NSW) received assent on 25 June 2008 as part of major State government reforms to environmental and land-use planning in New South Wales. This article will review the relevant recent amendments to the *Environmental Planning and Assessment Act 1979* (NSW), consider their impact on applicants for development, public participation in the planning process and the role of the Land and Environment Court of New South Wales in relation to land-use planning in the State, and discuss whether the amendments are consistent with the object of public participation enshrined in the Act and the intentions of the New South Wales government. 107

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