

LOCAL GOVERNMENT LAW JOURNAL

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This article provides an update on developments in the South East Queensland water reform since the original article published in an earlier edition: (2009) 15 LGLJ 46.	140
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Streamlining development assessment processes – Is South Australia’s new Residential Code for Development the answer? – *Paul Leadbeter*

South Australia’s planning system has been the subject of review and changes in recent years. The changes have been largely driven by pressure from the development industry which has complained that the system for development assessment and approval is too slow and bureaucratic. One measure designed to address these concerns is the introduction of a Residential Code for Development. This code makes a large number of residential and minor forms of development “complying” and thus must be granted approval. It also specifies a number of proposals which do not require development plan consent. The code is not designed to apply in some more sensitive areas and zones (eg heritage and flood-prone areas). In order to be classified as a residential form of development, a development must meet a range of prescriptive criteria. The article concludes that the onerous nature of many of the criteria will limit the code’s effectiveness. Development on greenfield sites will most suit the application of the code’s provisions. Development on infill sites will be less able to meet the code’s prescriptive criteria. Disappointingly, the code fails to promote more sustainable forms of development.	144
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Environmental planning in the public interest and private property rights: The role of s 28 of the Environmental Planning and Assessment Act 1979 (NSW) – *Clifford Ireland*

Section 28 of the Environmental Planning and Assessment Act 1979 (NSW) is a plainly worded statutory provision. It lies at the intersection of private property and public planning, and allows instruments such as restrictive covenants registered on title to be displaced by development consent granted under that Act. The section has given rise to much litigation, and it is timely to discuss the proper interpretation of this section in the context of the recent decided cases.	155
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A wrong turn in the process of environmental assessment: Mandatory costs orders for amendments to development applications – Mark Seymour

The process of environmental assessment in New South Wales involves a right of full merits review by the Land and Environment Court from decisions at first instance by local councils. In September 2008 a new section of the Environmental Planning and Assessment Act 1979 (NSW) was inserted requiring the Land and Environment Court to make specific orders for costs if a proponent amends the development application prior to it being determined. This article analyses the new s 97B and concludes that the section is either misunderstood, unconstitutional or an enactment of bad policy. 162

Potentially contaminated land in Victoria – challenges for local government – Mark Beaufoy

In making planning decisions about potentially contaminated land (PCL) councils must decide whether the land is suitable for the proposed use and development. Planning policy encouraging urban consolidation and increasing property values are leading to the transformation of former industrial land to residential and other sensitive uses. However, the potential restrictions on land-use and the costs of investigating, remediating and redeveloping contaminated land can be significant. In making planning decisions about PCL, councils often face significant pressure to be commercial and practical, and to balance other planning objectives in performing legal obligations associated with PCL. At the same time, as a number of cases before the courts have demonstrated, councils can also face significant legal liability (and expensive and time-consuming litigation) if statutory obligations relating to PCL are not properly performed. The regulatory framework for PCL in Victoria is mature, having developed over the past 20 years following amendments to the Planning and Environment Act 1987 (Vic) and the introduction of Ministerial Direction No 1 – Potentially Contaminated Land on 9 October 1989. However, further work is required to improve some aspects of the regulatory framework, give clearer guidance to councils in making decisions about PCL and avoid the uncertainty created by some recent decisions reviewed by the Victorian Civil and Administrative Tribunal. 170

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 - ² Hayton, n 1, p 286.
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 - ⁴ Trindade and Smith, n 3 at 358-359.
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