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Update Summary

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**LOCAL GOVERNMENT LAW AND PRACTICE
NEW SOUTH WALES**

S White

Updated by L Groom

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New commentary has been provided by Lawrie Groom:

New Developments

New:

- Investigation into the conduct of the City of Canada Bay Council mayor and others by ICAC: Operation Tolosa, has been inserted, at **[ND.2210]**
- Local Government (General) Amendment (Audit, Risk and Improvement Committees) Regulation 2023, has been inserted, at **[ND.2220]**
- City of Canada Bay mayor dismissed and disqualified from civic office, has been inserted, at **[ND.2230]**
- Local Government (General) Amendment (Tendering) Regulation (No 2) 2023, has been inserted, at **[ND.2240]**
- Improved employment protections for council waste workers, has been inserted, at **[ND.2250]**
- IPART review into funding model to address financial sustainability concerns, has been inserted, at **[ND.2260]**
- Amendments to the Local Government Act 1993 during 2023: summary, has been inserted, at **[ND.2270]**
- Performance and Suspension Orders Procedural Framework, has been inserted, at **[ND.2280]**
- Local Government (General) Amendment (City of Hawkesbury) Regulation 2024, has been inserted, at **[ND.2290]**
- Local Government Amendment (De-amalgamations) Bill 2024, has been inserted, at **[ND.2300]**
- Boundaries Commission report on Inner West Council demerger proposal, has been inserted, at **[ND.2310]**

Local Government Act 1993

Updated:

- The principles of natural justice regulate the exercise of a power conferred on a council when the exercise of that power may prejudice the interests of persons. See *Brisbane City Council v Leahy & Others* [2023] QCA 133; (2023) 255 LGERA 324, at [LGA.8.30].
- The court addressed the way a council considered objections to a proposed compulsory acquisition of land. See *Hamelech Basodeh Pty Ltd v Gold Coast City Council* [2022] QSC 57, (2022) QR 400, at [LGA.8.40].
- The general power conferred by s 88K of the *Conveyancing Act 1919* should be read down. See *Owners of Strata Plan No 91016 v Upright Builders Pty Ltd (No 2)* [2023] NSWSC 867; (2023) 257 LGERA 360, at [LGA.45.20].
- The High Court unanimously dismissed the appeal from the decision of the Court of Appeal. See *123 259 932 Pty Ltd v Cessnock City Council*, inserted at [LGA.55.110].
- A council owns all the infrastructure that council carries out in a road. See *Rouse Hill Custodian Corporation Pty Ltd v Prisma Rouse Hill Development Pty Ltd* [2023] NSWLEC 48, (2023) 258 LGERA 1, at [LGA.59A.10].
- The duty to afford natural justice and the extent of the duty depends upon the "statutory framework". See *Mobil Oil Australia Pty Ltd v Federal Commissioner of Taxation* (1963) 113 CLR 475, at [LGA.CH7.PT2.DIV2.20].
- The Supreme Court considered whether certain land was "subject to a trust for a public purpose". See *Piety Developments Pty Ltd v Cumberland City Council* [2023] NSWSC 480, [LGA.SCH7PT2.20].
- It would be an abuse of the acquiring authority's powers if the ulterior purpose was a substantial purpose. See *Perry Properties Pty Ltd v Georges River Council* [2023] NSWLEC 51, (2023) 258 LGERA 113, at [LGA.187.30].
- Owner approval is not required in circumstances akin to those where acquisition for re-sale was expressly permitted. See *R & R Fazzolari Pty Ltd v Parramatta City Council* (2009) 237 CLR 603, at [LGA.188.10].
- The object or purpose of section 220 is the establishment of the legal status of a council. See *Environment Protection Authority v McMurray* [2024] NSWLEC 6, at [LGA.220.20].
- The authorisation by Parliament of councils to levy rates and charges reflects the constitutional principle that no tax can be levied without parliamentary

authority. See *Redland City Council v Kozik* [2024] HCA 7, at [LGA.CH15.05].

- Questions were raised on the legality of State taxes such as a tax on a gift of goods or an inheritance of goods. See *Vanderstock v Victoria* [2023] HCA 30, at [LGA.CH15.10].
- The first step of making the charge is general; the second step of levying the charge is particular to each parcel of rateable land. See *Clarence Village Ltd v Clarence Valley Council* [2023] NSWLEC 135, at [LGA.501.10].
- A council is entitled in cases of hardship to make an order directing certain eligible persons are not liable to pay rates. See *Mangoola Coal Operations Pty Ltd v Muswellbrook Shire Council* [2023] NSWCA 275, at [LGA.527.30].
- The council submitted that “the language of s 694 is mandatory and that no discretion arises”. See *Blacktown City Council v Hambly (No 3)* [2023] NSWLEC 141, at [LGA.694.10].

New:

- Protection afforded by the Register, has been inserted at, [LGA.113.10].
- Delegation to a council officer (other than the General Manager), has been inserted at, [LGA.378.10].
- Overview of Chapter 15, has been inserted at, [LGA.CH15.01].
- Adverse possession of road vested in a council, has been inserted at, [LGA.701.10].