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Comity and consistency: What role should "the two C's" play in determining class 1 development appeals in the Land and Environment Court? – *Guy J Dwyer*

There have been a number of recent cases in the Land and Environment Court which have considered the practice of comity and consistency in the determination of appeals concerning development in class 1 of that court's jurisdiction. With respect to the practice of comity, there appears to be some conflicting views as to the proper role that practice plays in the determination of class 1 appeals concerning development. By contrast, recent case law arising from the court on the "principle of consistency" has generally applied the views expressed by the Court of Appeal in *Segal v Waverley Council* (2005) 64 NSWLR 177 without question: that is to say, consistency in the application of the court's planning principles is a desirable objective but decision-makers are not obliged to apply the "principle of consistency" when determining class 1 development appeals. The purpose of this article is to consider the following question: what role should comity and consistency play in the determination of appeals concerning development in class 1 of the court's jurisdiction? It argues that the practice of comity should not apply in circumstances where any decision-maker is determining a class 1 development appeal at first instance. On the contrary, it is suggested that the practice of comity, properly applied in class 1 of the court's jurisdiction, should usually result in questions of law determined in earlier appeals concerning development under s 56A of the *Land and Environment Court Act 1979* (NSW) being determined in the same way in later appeals concerning development under s 56A of the Act. The article also argues that the importance of consistency in decision-making should be viewed as a relevant or permissive consideration to which regard must or may be had – depending on the particular case – when a class 1 development appeal is being determined by a decision-maker at first instance. 3

Orgies of seizure and violence: Compulsory acquisition and private sector redevelopment – lessons for Australia – *Melissa Pocock*

This article seeks to continue the debate on extending local government compulsory acquisition powers for the assembly of private sector redevelopment sites, termed economic development takings. The United States Supreme Court decision in *Kelo v City of New London* 545 US 469 (2005) is analysed and criticisms of the American system, including the use of coercive powers, under-compensation of owners, governmental abuse, targeting of minority and low socio-economic groups and the imposition of dignitary harms, are considered. This article examines whether these criticisms may apply to the *Town and Country Planning Act 1990* (UK) and, by extension, an Australian system modelled upon that legislation. It proposes further research to reduce negative impacts of economic development takings including: first, changing how compensation is calculated; secondly, incorporating legislatively defined criteria to measure the direct and indirect public benefits from proposals; and finally, conducting a cost/benefit analysis of implementing relocation assistance, community engagement and public consultation. 27

POLICY AND PRACTICE

Reconciling planning and environmental law and policy – *Glen McLeod* 41

DIGEST OF CASES 47

LOCAL GOVERNMENT & PLANNING LAW GUIDE CASES

New South Wales 63

South Australia 68

Victoria 71

Western Australia 76