

Friday, 19 December 2014

Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Pittwater Council v Keystone Projects Group Pty Ltd (NSWSC) - security of payments - adjudicator made determination in good faith - summons dismissed

Graham v Western Australian Planning Commission (WASCA) - real property - compulsory acquisition of land - Tribunal lacked jurisdiction to determine quantum

Ruckschloss v Simmons (ACTSC) - judicial review - appeal from answer to separate question dismissed

Joondanna Investments Pty Ltd v The Minister for Lands, Planning and the Environment (NTSC) - discovery - judicial review - documents not relevant to question in proceedings - application dismissed

Summaries with links (5 minute read)

Pittwater Council v Keystone Projects Group Pty Ltd [2014] NSWSC 1791

Supreme Court of New South Wales

Hallen J

Security of payments - Council sought determination that adjudicator's determination was not a good faith exercise on part of adjudicator of responsibilities under s22 *Building and Construction Industry Security of Payment Act 1999* (NSW) and was therefore void - held: adjudicator carried

out task entrusted to him in good faith and gave reasons for his conclusion - adjudicator considered the matters he was required to consider in s22(2) - adjudicator lawfully exercised functions required for making of a valid determination under s22 - determination not void - no reason to restrain first defendant from taking steps to enforce determination, or to restrain second defendant from issuing adjudication certificate pursuant to s24 in respect of determination - summons dismissed.

[Pittwater Council](#)

Graham v Western Australian Planning Commission [2014] WASCA 234

Court of Appeal of Western Australia

Martin CJ, Buss JA & Beech J

Real property - compulsory acquisition of land - Commission applied to State Administrative Tribunal for determination of quantum of compensation payable to landowners as result of compulsory taking of their land - landowners sought order striking out proceedings on basis they were more appropriately dealt with by Supreme Court or that Tribunal lacked jurisdiction - Tribunal dismissed application - landowners sought leave to appeal - held: contention rejected that Tribunal lacked jurisdiction because there was no valid taking order in respect of land - contention upheld that there was no 'offer' of compensation from Commission in respect of three out of four lots, and that the making of offer was condition of Tribunal's jurisdiction to determine the quantum - appeal allowed to that extent - Tribunal exercised its discretion with respect to the striking out proceedings on erroneous assumption that it had jurisdiction to determine quantum - matter remitted to Tribunal for further consideration in respect of the proceedings relating to the one lot which fell within Tribunal's jurisdiction.

[Graham](#)

Ruckschloss v Simmons [2014] ACTSC 340

Supreme Court of the Australian Capital Territory

Penfold J

Judicial review - engineer sought judicial review of conduct of officers of Department of Environment and Sustainable Development - one officer was Construction Occupations Registrar - engineer claimed conduct would have effect on his work as an engineer - engineer sought interim injunction preventing officers continuing with proposed conduct pending determination of judicial review application - engineer appealed from Master's affirmative answer to separate question whether construction occupations registrar could impose conditions on licensed building surveyors relating to acceptance of advice from engineers or from named engineer - held: Court not persuaded Master erred in reasoning he applied in determining how to answer question stated, or that the question should have been answered "no" - appeal dismissed.

[Ruckschloss](#)

Joondanna Investments Pty Ltd v The Minister for Lands, Planning and the Environment

[2014] NTSC 58

Supreme Court of the Northern Territory

Master Luppino

Discovery - judicial review - substantive proceedings sought declaration Exceptional Development Permit invalid - plaintiff sought discovery of documents from defendants - ss17, 24, 38, 42, 51 & 89 *Planning Act* (NT) - rr1.09 & 29.08 *Supreme Court Rules* (NT) - held: Court not satisfied requested documents were relevant to a "question" in proceedings - second pre-condition required by r29.08 not satisfied - application dismissed.

[Joondanna Investments Pty Ltd](#)

The Veil

Bravely re-living
half-remembered,
half-invented
childhoods,
we summon the Babe
to help us draw
the veil of celebration
over
everything.

And yet,
behind the veil,
our hearts cry out
for a world
re-made,
not veiled.

So did he.

And showed us how.

Reason enough
to celebrate,
I'd say.

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