

Friday, 7 June 2019

Weekly Environmental Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Environmental Law

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Executive Summary (1 minute read)

RebelMH Neutral Bay Pty Limited v North Sydney Council (NSWCA) - environment and planning - refusal of development consent in respect of proposed building - appeal dismissed

Queensland Phosphate Pty Ltd v Korda (VSCA) - stay - corporations - winding up - application for lifting of stay on basis order and undertaking not complied with - stay varied

Maryborough Solar Pty Ltd v The State of Queensland (QSC) - judicial review - s73A *Electrical Safety Regulation 2013* (Qld) was invalid - parties to make submissions on declaratory relief's form

Lake Laurel Pty Ltd & Ors v Nichols Constructions Pty Ltd & Ors (QSC) - loan agreement - mortgage - determination of two separate questions concerning outstanding claim for amount owing under loan agreement

United Petroleum Pty Ltd v Alice Springs Town Council (NTSC) - costs - plaintiff sought review of defendant's purported refusal to approve 'Traffic Impact Assessment Report' - proceedings discontinued - no order as to costs

Summaries With Link (Five Minute Read)

RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130
Court of Appeal of New South Wales

Gleeson & Payne JJA; Preston CJ of LEC

Environment and planning - appellant sought development consent in respect of proposed building - respondent refused application - appellant revised plans and submitted 'revised request' - Land and Environment Court refused revised request and dismissed appeal - appellant contended primary judge misconstrued and misapplied cl 4.6(3) & (4)(a)(i) North Sydney Local Environmental Plan 2013, misconstrued and misapplied objectives of 'height development standard', misconstrued and misapplied 'objective (f)' of 'height development standard' and denied appellant procedural fairness by 'not affording' "amber light approach" to appellant - held: grounds of appeal not established - appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 7 June 2019]

Queensland Phosphate Pty Ltd v Korda [2019] VSCA 119

Court of Appeal of Victoria

McLeish & Hargrave JJA

Stay - winding up - corporations - applicants were two companies ('Paradise' and 'Queensland Phosphate') - Paradise held 'mining tenements and associated exploration authorities' - applicants entered arrangement by which Queensland Phosphate 'purported to acquire' shares in Paradise from second respondent - Randall AsJ found 'relevant agreements' 'void and unenforceable', ordered that Paradise 'be wound up in insolvency' and ordered first respondent's appointment as liquidators - Randall AsJ stayed orders to permit application for leave to appeal - stay extended by Hargrave JA - respondents sought lifting of stay on basis of Paradise's failure to comply with order and breach of undertaking by applicants - whether orders and undertaking complied with - held: stay varied.

[Queensland](#)

[From Benchmark Tuesday, 4 June 2019]

Maryrorough Solar Pty Ltd v The State of Queensland [2019] QSC 135

Supreme Court of Queensland

Bradley J

Judicial review - applicant, pursuant to s43(2) *Judicial Review Act 1991* (Qld) or in court's inherent jurisdiction, sought declaration that s73A *Electrical Safety Regulation 2013* (Qld) was invalid - applicant contended that s73A exceeded 'regulation-making power' which s210 *Electrical Safety Act 2002* (Qld) (Electrical Safety Act) conferred, and s73A was inconsistent with Electrical Safety Act - s22 *Statutory Instruments Act 1992* (Qld) - ss4 & 5 Electrical Safety Act - held: s73A invalid - parties to make submissions on declaratory relief's form.

[Maryrorough](#)

[From Benchmark Wednesday, 5 June 2019]

Lake Laurel Pty Ltd & Ors v Nichols Constructions Pty Ltd & Ors [2019] QSC 129

Supreme Court of Queensland

Bowskill J

Separate questions - loan - mortgage - outstanding matter for determination concerned third plaintiff's claim for payment allegedly owed by first defendant under loan agreement - separate questions for determination - whether effect of loan agreement's clause and/or item in 'schedule to the loan agreement' (schedule) was that 'principal sum' was 'payable upon demand' whether plan of subdivision's registration was "registration of the plan(s) of the Ziebarth Subdivision" within meaning of item in schedule, such that 'obligation to repay the principal sum 'within 12 months of registration' was triggered - held: separate questions answered in the negative.

[Lake Laurel](#)

[From Benchmark Friday, 7 June 2019]

United Petroleum Pty Ltd v Alice Springs Town Council [2019] NTSC 41

Supreme Court of the Northern Territory

Grant CJ

Costs - plaintiff sought review of defendant's purported refusal to approve 'Traffic Impact Assessment Report' which plaintiff submitted pursuant to Development Permit's condition - plaintiff contended it had not been provided with 'expert advice' which defendant had taken into account - after proceedings commenced the advice was provided to plaintiff - parties agreed there was 'no further point to the litigation' - determination of costs - *Parap Hotel Pty Ltd v NT Planning Authority* [1993] NTSC 37 - *United Super Investments Pty Ltd & Ors v Randazzo Investments Pty Ltd & Ors* [2010] NTSC 31 - rr25.05, 63.03 & 63.11 *Supreme Court Rules 1987* (NT) - held: no order made as to costs.

[United Petroleum](#)

[From Benchmark Friday, 7 June 2019]

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To a Locomotive in Winter

By: Walt Whitman

Thee for my recitative,
Thee in the driving storm even as now, the snow, the winter-
day declining,
Thee in thy panoply, thy measur'd dual throbbing and thy
beat convulsive,
Thy black cylindric body, golden brass, and silvery steel,
Thy ponderous side-bars, parallel and connecting rods,
gyrating, shuttling at thy sides,
Thy metrical, now swelling pant and roar, now tapering in
the distance,
Thy great protruding head-light fix'd in front,
Thy long, pale, floating vapor-pennants, tinged with delicate
purple,
The dense and murky clouds out-belching from thy smoke-
stack,
Thy knitted frame, thy springs and valves, the tremulous
twinkle of thy wheels,
Thy train of cars behind, obedient, merrily following,
Through gale or calm, now swift, now slack, yet steadily
careering;
Type of the modern—emblem of motion and power—pulse of
the continent,
For once come serve the Muse and merge in verse, even
as here I see thee,
With storm and buffeting gusts of wind and falling
snow,
By day thy warning ringing bell to sound its notes,
By night thy silent signal lamps to swing.

Fierce-throated beauty!
Roll through my chant with all thy lawless music, thy
swinging lamps at night,
Thy madly-whistled laughter, echoing, rumbling like an
earthquake, rousing all,
Law of thyself complete, thine own track firmly holding,
(No sweetness debonair of tearful harp or glib piano thine,)
Thy trills of shrieks by rocks and hills return'd,
Launch'd o'er the prairies wide, across the lakes,
To the free skies unpent and glad and strong.



https://en.wikipedia.org/wiki/Walt_Whitman

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