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Benchmark

Friday, 12 July 2024

Weekly Environmental Law

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

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Executive Summary (One Minute Read)

Lahoud v Willoughby City Council (NSWCA) - Local Planning Panel had not erred in granting development consent for the adaptive reuse of an existing commercial building, and permitting the height restrictions in the LEP to be exceeded

Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd (VSCA) - an improvement for the purposes of land valuation under the *Valuation of Land Act 1960* (Vic) does not need to serve the current highest and best use of the land

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The scent on the breeze

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Summaries With Link (Five Minute Read)

Lahoud v Willoughby City Council [2024] NSWCA 163
Court of Appeal of New South Wales
Meagher & Leeming JJA, & Preston CJ of LEC
Planning law - Willoughby Local Planning Panel, on behalf of Willoughby City Council, granted development consent for the adaptive reuse of an existing commercial building at Northbridge - the development included erecting an additional level (Level 4) on the existing building to provide two 3-bedroom apartments, which increased the height of the building to 18.08m - under cl 4.3 of *Willoughby Local Environmental Plan 2012*, the maximum height of a building on the land was 14m - the Panel granted a written request under cl4.6 of the Plan that sought to justify the contravention of the height standard - Lahoud brought judicial review proceedings in the Land and Environment Court - the primary judge dismissed the proceedings - Lahoud appealed - held: the appellant misunderstood the height standards - once the incorrectness the appellant's assumptions about the height standards was appreciated, each of the height standard grounds of appeal could be seen to be unfounded - the Panel did not breach cl4.6(4) by granting development consent to the development for which consent was sought except for the specified parts of Level 4 of the building which were required by the conditions to be redesigned, relocated or deleted - that development, except for the specified parts which were required to be redesigned, relocated or deleted, did contravene the height standard, but the Panel was satisfied that the applicant's written request had adequately addressed the matters required to be demonstrated - on a proper construction of the development consent, the development to which the Panel granted development consent was the development for which the consent was sought, except for the parts of Level 4 which were required by the conditions of consent to be redesigned, relocated or deleted, and after that redesign, relocation or deletion of those parts of Level 4 had been effected - the question of whether the building as proposed to be redeveloped will be a building that has an active street frontage within the statutory description in cl 6.7(5) was not a jurisdictional fact, but was rather a question for the Panel to decide - the Panel's finding that the building has an active street frontage did not involve any jurisdictional error - other errors not established - appeal dismissed.
View Decision
[From Benchmark Friday, 12 July 2024]

Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd [2024] VSCA 157
Court of Appeal of Victoria
Emerton P, Kennedy, & Lyons JJA
Land valuation - Landene is a Queen Anne-influenced, two-storey red brick villa constructed in 1897, and is one of the few remaining fragments of the 19th century built environment on St Kilda Road, Melbourne, and surrounded by much newer commercial and residential towers - the Land is zoned 'Commercial 1' under the *Port Phillip Planning Scheme*, and is subject to a number of design and development overlays and a site-specific heritage overlay, which prevent the demolition of Landene without a permit, thus constraining the development of the land in

accordance with its zoning - WSTI bought the land in 2019 for $8.25 million, and extensively renovated the interior of Landene for use as a private gallery for its collection of art and antiques - the Valuer-General valued the land in 2020 and 2021 at $6.2million under the *Valuation of Land Act 1960* (Vic) - WSTI objected - the Valuer-General disallowed the objections - WSTI applied to the Victorian Civil and Administrative Tribunal - the Tribunal agreed with WSTI and valued the land in each year at $2.925million - the Valuer-General appealed - held: the 'site value' of land under s2 of the *Valuation of Land Act* is the sum the land might be expected to realise if held in unencumbered fee simple and sold on reasonable terms, and assuming that any improvements had not been made - in order to be an improvement as defined in the Act, the works done or materials used must have the effect of increasing the value of the land - the benefit of an improvement to land may be seen to persist until 'exhausted', in the sense it no longer facilitates the economic use of the land - even if it were necessary for land to achieve its highest and best use in order to become 'improved', there is no reason to doubt that Landene constituted the highest and best use of the land when it was added to the land - the Tribunal had been correct to regarding Landene as an improvement - Landene was a valuable structure accommodating a number of uses that continues to benefit the land - leave to appeal granted but appeal dismissed.
Valuer-General Victoria
[From Benchmark Monday, 8 July 2024]

Executive Summary and (One Minute Read)

Moody v Netchoice (SCOTUS) - Lower court decisions upholding State statutes prohibiting social media companies from moderating content posted by third parties were reversed for failure to conduct proper First Amendment analysis

Summaries With Link (Five Minute Read)

Moody v Netchoice 603 US ___ (2024)
Supreme Court of the United States
The States of Florida and Texas enacted legislation that prohibited internet platforms from moderating third-party content based on content. The Supreme Court found serious First Amendment implications that the lower courts failed to properly consider. The cases were remanded to the courts below. The Court cited to *Miami Herald Publishing Co v Tornillo*, 418 US 241 (1974), where it was held that a Florida statute requiring newspapers to offer a right of reply violated the First Amendment because it consisted of compelled speech. Compelled speech can violate the First Amendment as much as suppression of speech. The Court said that government cannot meddle in speech by claiming that it is improving the marketplace of ideas. Here, the Court concluded that states were not likely to succeed in prohibiting the platforms from enforcing the platforms' own content moderation rules. The Court said that the States' attempt to better balance the mix of viewpoints on the internet by restricting content moderation amounted to an interference with speech decisions made by the private platforms. The Court added that a State cannot prohibit speech to rebalance the speech market. Inasmuch as the content moderation practices amounted to speech decisions by the platforms, the government was not free to enact laws that infringed those private speech rights.
Moody

Poem for Friday

Iceland

By Jonas Hallgrimsson (1807-1845)

Charming and fair is the land,
and snow-white the peaks of the jokuls [glaciers],
Cloudless and blue is the sky,
the ocean is shimmering bright,
But high on the lave fields, where
still Osar river is flowing
Down into Almanna gorge,
Althing no longer is held,
Now Snorri's booth serves as a sheepfold,
the ling upon Logberg the sacred
Is blue with berries every year,
for children's and ravens' delight.
Oh, ye juvenile host
and full-grown manhood of Iceland!
Thus is our forefathers' fame
forgotten and dormant withal.

Jonas Hallgrimsson was born in Iceland on 16 November, 1807. He is a revered figure in Icelandic literature, writing in the Romantic style. His love of the Icelandic people and country side and pride in the national identity comes through his poetry. He was a promoter of the Icelandic Independence Movement. He was employed for a time by the sheriff of Reykjavik as a clerk. He studied law at the University of Copenhagen. He also worked as a defence lawyer. He founded the Icelandic periodical Fjolnir first published in 1835. He died on 26 May 1845, after slipping on stairs and breaking his leg, the previous day. He died of blood poisoning aged 37 years. His birthday each year is recognised as the Day of the Icelandic Language.

Ég bið að heilsa, words by Jónas Hallgrímsson, composition by Ingi T. Lárusson
https://www.youtube.com/watch?v=6OqbfGSJDUc

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