



Friday, 29 March 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)

Cai v Launceston City Council (TASSC) - Tribunal had not erred in law in affirming Council's decision to grant approval for a 4.5 to 5 star hotel including a restaurant, bar, function centre, wellness centre, day spa, and small unspecified retail use in Launceston

HABEAS CANEM

The scent on the breeze



Summaries With Link (Five Minute Read)

Cai v Launceston City Council [2024] TASSC 10

Supreme Court of Tasmania

Estcourt J

Administrative law - Launceston City Council granted a permit to the second respondent for the use and development of a hotel in Launceston - the permit described the approved use as visitor accommodation including associated restaurant, function centre, wellness centre, retail, and bars - the proposed use and development as for a 4.5-to-5-star hotel which would cost in the vicinity of \$50million to develop, and the designs for the hotel included a restaurant, bar, function centre, wellness centre, day spa, and small unspecified retail use - Council had rejected a previous proposal by the second defendant on the grounds that it did not satisfy the relevant clauses of the *Launceston Interim Planning Scheme 2015* because it was not compatible with the streetscape and character of the surrounding area - the Tasmanian Civil and Administrative Tribunal affirmed Council' decision to grant the permit - the appellant appealed on questions of law under s136 of the *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) - held: the Tribunal did not err in law by finding that, for a use to be "subservient", it must serve the primary use, and by failing to find that a subservient use also needed to serve in a subordinate or secondary capacity to the primary use - the ordinary and grammatical meaning of the words "subservient part" did not suggest such a test - the Tribunal also did not err in law in finding that the phrase "directly associated with, and which are a subservient part" required only that the uses other than the visitor accommodation component (that is, the retail, restaurant, conference facility, and bars described as the "ancillary uses") be directly connected with and serve, contribute to, or promote the visitor accommodation use - the Tribunal did not take irrelevant considerations into account - the Tribunal did not err in law by finding that an unspecified retail use could be approved as a use directly associated with and subservient to the proposed visitor accommodation use, and by treating the assessment of whether the proposed use fell within the operation of the relevant clause of the *Launceston Interim Planning Scheme* as a matter for enforcement - appeal dismissed.

[Cai](#)

[From Benchmark Tuesday, 26 March 2024]

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Lifestyle Equities v Amazon UK Services Ltd (UKSC) - In a cross-border sale of merchandise where the same trade mark was owned by different entities in USA and UK, Amazon was liable for trade mark infringement where UK customers were targeted by Amazon's US website

Summaries With Link (Five Minute Read)

Lifestyle Equities v Amazon UK Services Ltd [2024] UKSC 8,

Supreme Court of the United Kingdom

Lord Hodge, Lord Briggs, Lord Hamblen, Lord Burrows, & Lord Kitchin

The trade mark at issue was the 'Beverly Hills Polo Club' brand. The holder of the mark in the EU/UK was Lifestyle Equities which is unrelated to the brand owner in the USA. A UK resident ordered US sourced goods bearing the trade mark through Amazon's US website. The owner of the EU trade mark contended that Amazon was liable for trade mark infringement because it targeted consumers in the UK/EU. This matter concerned conduct that occurred before Brexit. Applying EU law, the Supreme Court said that Amazon could only be liable for trade mark infringement in a cross-border sale if it in fact targeted consumers in the UK. The mere fact that a foreign website is accessible to a UK resident is insufficient to establish targeting of a UK consumer. The question for the court was whether an average consumer within the UK, who is reasonably well-informed and observant, would consider the website targeted at that consumer. The Court found that targeting had occurred because Amazon offered to deliver to the UK, in a dialog box Amazon specified which goods could be shipped to the UK, and specified UK delivery times and featured the option to pay in British currency. The Supreme Court also stated that Amazon's subjective intent was not the key issue. Rather, the question was one of objective fact taken from the perspective of the average consumer. Intent may, however, be taken into account to the extent it is relevant to the objective assessment made by the court.

[Lifestyle Equities](#)

Poem for Friday

The Nightingale

By: Sara Coleridge (1802-1852)

In April comes the Nightingale,
That sings when day's departed;
The poets call her Philomel,
And vow she's broken-hearted.

To them her soft, sweet, ling'ring note
Is like the sound of sorrow;
But some aver, no need hath she
The voice of grief to borrow.

No, 'tis the merry Nightingale,
Her pipe is clear and thrilling;
No anxious care, no keen regret,
Her little breast is filling.

She grieves when boys have robb'd her nest,
But so would Stork or Starling;
What mother would not weep and cry
To lose her precious darling?

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