



Friday, 30 August 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)

Save Wallum Incorporated v Clarence Property Corporation Limited (FCA) - interlocutory injunction granted to restrain development allegedly affecting threatened species

Chiodo Corporation Operations Pty Ltd v Douglas Shire Council (QCA) - primary judge had not erred in upholding a decision of Council to refuse consent for a luxury five-star resort complex

HABEAS CANEM

McGregor the puppy



Summaries With Link (Five Minute Read)

Save Wallum Incorporated v Clarence Property Corporation Limited [2024] FCA 967

Federal Court of Australia

Bromwich J

Environmental law - an environmental group sought an interim injunction under s475(5) of the *Environment Protection and Biodiversity Act 1999* (Cth) to restrain the respondent from undertaking certain works on land it was developing at Brunswick Heads - the parties were agreed that orders should be made, but disagreed as to what activities should be permitted - the applicant contended the respondent's proposed works were likely to have a "significant effect" on several species listed as threatened under the Act, namely the Mitchell's Rainforest Snail (critically endangered), the Koala (endangered), the South-Eastern Glossy Black Cockatoo (vulnerable), the Wallum Sedge Frog (vulnerable), and the Long-nosed Potoroo (vulnerable) - held: the Court was not satisfied that the nature and extent of the protest activities alleged by the respondent, even assuming that they could all be attributed to the applicant, were a reasonable or sufficient basis on which to withhold relief that was otherwise appropriate - the Court was not satisfied that there has been any material delay by the respondents in commencing development that should bear any consequence - delay in an applicant in seeking interlocutory relief may be relevant to the question of whether it should be granted - however, the applicant's delay here had not been proven to have caused significant inconvenience - in the absence of evidence which the respondents were in the best position to adduce, the Court was unable to infer or assume that any delay occasioned by making the interim injunction would be substantial - the balance of convenience favours a restraint on the respondents building certain ponds until the determination of the permanent injunction application - interlocutory injunction made.

[Save Wallum Incorporated](#)

[From Benchmark Wednesday, 28 August 2024]

Chiodo Corporation Operations Pty Ltd v Douglas Shire Council [2024] QCA 153

Court of Appeal of Queensland

Flanagan JA, Brown AJA, & Bradley J

Planning law - Douglas Shire Council refused an application by Chiodo for a development permit for a material change of use to facilitate the development of a luxury five-star resort complex on vacant land in Port Douglas - the Planning and Environment Court dismissed Chiodo's appeal - Chiodo sought leave to appeal to the Court of Appeal, which appeal would be limited to error of law or jurisdictional error - held: for leave to be granted, Chiodo had to not only demonstrate an arguable error or mistake in law but also show that the error was material in that it could have materially affected the decision of the Court below - the primary judge's reasons showed that she considered whether the proposed development complied with Performance Outcome 4 of the *Port Douglas/Craiglie Local Plan Code* - the primary judge had appreciated the principles and canons of statutory interpretation relevant to the applicable planning provisions - a line of authority to which Chiodo referred did not establish a discrete



principle of construction as it had asserted - it was not necessary to consider whether the primary had failed to recognise an inconsistency between a provision of the *Tourist Accommodation Zone Code* and a provision of *the Access, Parking and Servicing Code*, as this issue would only arise if Chiodo had succeeded on one of its previous points - leave to appeal refused.

[Chiodo Corporation Operations Pty Ltd](#)

[From Benchmark Tuesday, 27 August 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd (UKSC) - Manchester Ship Canal company was not barred from bringing a common law damages claim for trespass and nuisance against a public utilities company that discharged raw, untreated and foul sewage into the canal from outfalls lawfully maintained by the sewerage authority

Summaries With Link (Five Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd [2024] UKSC 22

Supreme Court of the United Kingdom

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Burrows, Lord Stephens, Lady Rose, Lord Richards

In a declaratory ruling, the Supreme Court was asked to decide whether the Manchester Ship Canal Company could bring a claim against the statutory sewerage authority for discharges of foul sewage into the canal. The defendant, United Utilities, was the statutory sewerage authority for North West England and owned about 100 outfalls from which treated sewage was discharged into the canal. However, sometimes untreated sewage was discharged into the canal as well. No allegation was made that the discharge of untreated sewage was caused by negligence. However, it could have been avoided through improved infrastructure. The High Court, upheld by the Court of Appeal, found that a canal owner could not bring a claim based on nuisance or trespass against a sewerage operator unless the discharge was the result of negligence or deliberate wrongdoing. The Supreme Court unanimously allowed the Canal Company's appeal. Sewerage is regulated by the *Water Industry Act 1991* and the Supreme Court held that nothing in the legislation permitted or authorised a sewerage authority to discharge foul water through outfalls. Inasmuch as the statute did not authorise the activity, common law remedies were available. The Court rejected the defence that the only way to avoid fouling the canal would be to construct sewerage infrastructure and that was a matter for Parliament. The Court found that there was nothing in the legislation indicating that Parliament intended to extinguish common law rights of action. While an injunction against further discharge presented questions relating to the process of regulatory approval for capital expenditures by the sewerage authority, that did not mean that common law-based awards for damages for invasion of property rights were precluded.

[Manchester Ship Canal Co](#)



Poem for Friday

i carry your heart with me

by e.e. cummings (1894-1962)

i carry your heart with me (i carry it in
my heart) i am never without it (anywhere
i go you go, my dear; and whatever is done
by only me is your doing, my darling)

i fear

no fate (for you are my fate, my sweet) i want
no world (for beautiful you are my world, my true)
and it's you are whatever a moon has always meant
and whatever a sun will always sing is you

here is the deepest secret nobody knows
(here is the root of the root and the bud of the bud
and the sky of the sky of a tree called life; which grows
higher than soul can hope or mind can hide)
and this is the wonder that's keeping the stars apart

i carry your heart (i carry it in my heart)

Edward Estlin Cummings (e.e. cummings), an American poet, essayist and playwright was born on 14 October 1894 in Cambridge Massachusetts. His parents encouraged his creativity, and included in their circle of friends artists, philosophers and writers. Cummings's father was a professor at Harvard, and later a minister of the Unitarian church. Cummings wrote poetry from the age of 8. Cummings was an ambulance driver during the first world war. He was interned in a camp in Normandy in the first world war, for having expressed anti-war sentiments. During his life he wrote about 2900 poems. He returned to Paris many times throughout his life. It has been written of Cummings that "No one else has ever made avant-garde, experimental poems so attractive to the general and the special reader," and "Cummings is a daringly original poet, with more vitality and more sheer, uncompromising talent than any other living American writer."

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian parents. He trained at the Royal Central School of Speech and Drama in London. In the



UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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