

LEVEL

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TWENTY  
SEVEN

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C H A M B E R S



***Genamson Holdings Pty Ltd v Moreton Bay  
Regional Council [2020] QSC 84***

***Conway & Ors v Australia Pacific LNG CSG  
Transmissions Pty Ltd & Anor [2020] QLC 26***

**Robert Anderson QC**

**Tim Stork**

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- > When is an application, not an application
- > Magna Carta
- > Eminent domain theory



- > *Land Clauses Consolidation Act 1845 (UK)*
- > *Commonwealth Constitution – s 51(xxxi)*
- > *Acquisition of Land Act 1967 (Qld)*



***McKenzie v Minister for Lands* [2011] WASC 335 at [76] per Martin J:**

“The fact that there have been laws authorising the compulsory acquisition of interests in land for many years does not detract from the exceptional character of those laws. The enjoyment of rights and interests in property, including land, is an attribute of our democracy which is highly cherished by the community. Laws providing for the expropriation of private rights and interests by the State are strictly construed. There is a strong and readily identifiable public interest in ensuring that interests in land are only compulsorily acquired by the State in conformity and in strict compliance with those laws.”

## >> ***Genamson:***

At [3]           ‘an extraordinary thing’;

At [8]           ‘radical’; and

At [35]          ‘Apart from statutes which deal with the removal of personal liberty, it is difficult to contemplate a more intrusive exercise of executive authority over the rights of an individual.’

# >> *Acquisition of Land Act 1967*

## 9 Ways in which land is to be taken

- (1) If within the time stated in the notice of intention to resume no objection is made or if, after due consideration of all objections, the constructing authority is of opinion that the land in question is required for the purpose for which it is proposed to be taken, the constructing authority may apply to the relevant Minister that the land be taken as prescribed by this section.
- (2) Such application shall be made within 12 months after the date of the notice of intention to resume and not thereafter.

# >> *Acquisition of Land Act 1967*

## 9(3) Such application shall contain or be accompanied by each of the following—

- (a) a copy of the relevant notice of intention to resume and of any further notice amending the same served under section 7;
- (b) where the land is not described in the notice of intention to resume as mentioned in section 7(3)(b)(i)—a copy of a plan of survey of the land certified as accurate by a cadastral surveyor or a plan sufficient to substantially identify the land;
- (c) a list of the names and addresses last known to the constructing authority of all persons who to the knowledge of the constructing authority are entitled pursuant to section 18 to claim compensation;
- (d) a statement as to those of the persons mentioned in paragraph (c) who have not been served with the notice of intention to resume and, a further statement setting out in relation to every such person, the manner in which such service was attempted and the reasons for failure to effect it;
- (e) a statement whether or not any person objected in terms of the notice of intention to resume and, in the case of such an objection or objections, the name or names of the objector or objectors, a copy of every objection, and a report by the constructing authority thereon.

## >> Outline

- > The protected plants regime
- > The facts in *Conway v APLNG*
- > Two issues:
  - Causation
  - Quantum of any loss
- > Takeaways

## >> The protected plants regime

- > High risk areas
- > Clearing required obtaining flora survey trigger map
- > Obligations when clearing within high risk area

## >> **The facts in *Conway v APLNG***

- > Entry by APLNG for flora survey
- > Sample taken and sent to Herbarium
- > Plant was a vulnerable plant
- > Updated mapping included land in high risk area

## >> Causation

- > Compensation payable for compensatable effect
- > Must be caused by APLNG activities
- > Did sending sample to Herbarium cause loss?
- > Did it result in new version of mapping?
- > Pre-existing condition of the land?

## >> Quantum of any loss

- > Discount from high risk area mapping?
- > No sales show discount
- > Expenses for expert reports

## >> Takeaways

- > Pre-existing condition not an infrastructure provider's liability (on these facts)
- > Difficulties for land owner proving causation
- > Not necessarily reduction in value
- > Reduced value must be proved by sales evidence

**ROBERT ANDERSON QC**

T +61 7 3008 3988

E [r.anderson@level27chambers.com.au](mailto:r.anderson@level27chambers.com.au)

**TIM STORK**

T +61 7 3008 3994

E [timothy.stork@level27chambers.com.au](mailto:timothy.stork@level27chambers.com.au)

[level27chambers.com.au](http://level27chambers.com.au)