# ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 32, Number 2

March 2015

ARTICLES

**Authority, responsibility and process in Australian biodiversity policy** – *Sarah Clement*, *Susan A Moore* and *Michael Lockwood*

Despite a raft of policies targeting biodiversity, Australia has yet to stem biodiversity decline. This study analyses biodiversity conservation policies in two contrasting Australian landscapes, with a specific emphasis on how authority and responsibility are determined and allocated, using a novel linguistic tool (the Institutional Grammar Tool) and interviews with policy-makers. Analysis revealed concerns around the narrowness of authority and the dominance of normative statements rather than rules. Unclear roles and responsibilities further diluted the clarity and allocation of authority. Political and economic factors drive policy implementation and constrain authority in both of the studied regions. A heavy focus on procedures rather than outcomes was also evident. Implications for policy design and the associated authority include broadening the definition of biodiversity, ensuring policy language more clearly allocates responsibilities, paying increased attention to the distributive as well as procedural elements of biodiversity policy, and developing buffering mechanisms to better cope with political and economic drivers. ..... 93

**The law and economics of feral extermination: Legal and economic answers to eradicating the cane toad** – *Rhett Martin*

The cane toad is a major environmental threat, but programs for its eradication/control are fragmented, ad hoc and seriously underfunded. They reflect a legal regime for feral eradication hampered by inefficient coordination and inconsistent legislative regimes, resulting in suboptimal eradication strategies created and managed at departmental level. The threat abatement plan (TAP) initiated by the federal government is hampered by this legal environment. There is no system in use in Australia for valuing biodiversity. As a result there is no accepted method to value biodiversity loss caused by the toad. Until that is rectified the underfunding of feral extermination will probably continue and our biodiversity will continue to decline as a result. Recommendations are made for legal reform of feral extermination laws, which should reflect the scale of the threat determined by a proper system for valuing biodiversity loss. ..... 115

**In the pipeline: How the Water NSW Act 2014 facilitates coal seam gas development in New South Wales** – *Matthew Cole*

The coal seam gas industry is a fundamental component to boosting economic growth and minimising rising energy costs in New South Wales. Some of the richest deposits of coal, and most lucrative drilling sites for CSG, exist within the Sydney catchment and its untouched Special Areas. The New South Wales Parliament recently passed legislation to abolish the Sydney Catchment Authority and create a new State-owned corporation responsible for the provision of bulk water. This article critiques the legislative mechanisms used to facilitiate this shift toward corporatisation and the subsequent impact of abandoning independent environmental planning controls to maximise profit. ..... 131

**"(Re)investing in disaster": The environmental and socio-economic consequences of deregulating the development of riparian and flood-prone lands in New South Wales** – *Tristan Orgill*

The complicated mosaic of land-use planning regulations, instruments and legislation governing the development of New South Wales floodplains is maladaptive, structurally flawed and, most importantly, ineffectual. In comparison to international "Room for Rivers" programs, the New South Wales regime permits development of flood-prone land, which is economically reckless, unjustifiably endangers human life and is incompatible with the principles of ecologically sustainable development. Similarly, while the New South Wales legislative framework for controlling the development of riparian corridor lands had ensured ecologically sustainable development prior to 2012, the "affordable housing" reforms have largely undermined this development control regime. This article argues that the complementary New South Wales frameworks for regulating floodplain and riparian land development must be reformed if they are to properly manage the socio-economic risks of flooding and facilitate the ecologically sustainable development of these vital ecological zones. ..... 144

**Restorative justice intervention in a planning law context: Is the "amber light" approach to merit determination restorative?** – *Mark Hamilton*

Restorative justice is a multifaceted concept which has been utilised in a number of settings. Even though, as yet, New South Wales environmental and planning law has not followed the impressive lead provided by Australia's New Zealand neighbours in the use of restorative justice in that context, a restorative justice conference was held following the destruction of an Aboriginal cultural heritage object and place. Class 1 planning appeals before the New South Wales Land and Environment Court are evolutionary in nature with the "amber light" approach to merit determination facilitating amendments to development proposals in response to community, consent authority and court concerns. This article argues that the amber light approach to merit determination is restorative. .... 164