

RESUMPTION LAW AND COMPULSORY ACQUISITIONS

CAPABILITY STATEMENT

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Project Lawyers Pty Ltd

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A specialist Sydney-based law firm providing legal services to corporate and private clients in relation to residential, retail, commercial and industrial projects.

The team at Project Lawyers have extensive expertise in the following areas:

- Construction and Engineering
- Planning and Environment
- Resumption Law and Compulsory Acquisitions
- Strata and Property Law
- Commercial and Hotels

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THE TEAM



Anthony Perkins, Partner

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Anthony is a partner with Project Lawyers. He has over 20 years' legal experience specialising in the areas of property development, planning law and construction law. He works in all jurisdictions throughout Australia, and is admitted to practice in the Supreme Court of NSW, the Supreme Court of QLD and the High Court of Australia.

Anthony regularly appears in the Land and Environment Court in relation to development appeals, challenges to determinations made by the Valuer-General in relation to compulsory land and business acquisitions and judicial review proceedings.

Anthony is also a regular presenter at industry seminars on topical issues associated with construction and planning law, and is regular presenter at the University of NSW's continuing legal education program on planning reform and resumption law in NSW.



Maysaa Parrino, Partner

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Maysaa is a partner with Project Lawyers, specialising in all areas of planning & environment, construction and strata renewal law. She has over 20 years' experience in advising and acting for strata schemes, developers, builders, contractors, consultants and homeowners in the areas of construction, strata and planning and environmental law. Maysaa advises on merit appeals and judicial reviews in the Land and Environment Court, contaminated land legislation, compulsory land acquisitions and valuation disputes, prosecutions and enforcement proceedings, easement matters and strata renewal proceedings.

Maysaa has worked with various government authorities and departments at local, state and federal levels. Maysaa has particular expertise in drafting a wide range of deeds and agreements involving different levels of government and authorities such as environmental offset agreements, planning agreements and contaminated land agreements. Maysaa is a regular advocate in the Land and Environment Court, Supreme, District, Local, Federal Courts and the NSW Civil & Administrative Tribunal.

Maysaa has specialised in the area of strata law for over 20 years. Together with her experience in class 3 of the Land and Environment Court, she has been able to apply her skills to advise and act in strata renewal matters. Maysaa Parrino was the first to lodge a notice with the Land and Property Information relating to a strata scheme the subject of a strata renewal and is the first to commence proceedings in Class 3 in the Land and Environment Court for Redevelopment of a Strata Scheme.

OVERVIEW

Project Lawyers is one Sydney's leading applicant law firms in the field of compulsory acquisitions and resumption law. We regularly advise property owners and business owners on their rights and entitlements under the Land Acquisition (Just Terms Compensation) Act 1991 (Just Terms Act) and how best to approach the acquiring authority in the lead up to the acquisition. We have been involved in resumption negotiations and litigation associated with all the major infrastructure projects in NSW over the past 20 years, including more recently the Sydney Metro City and Southwest, Randwick Campus Redevelopment Project, CBD and South East Light Rail Project, Schofields Road Upgrade Works, Northwest Rail Extension, NorthConnex Motorway, WestConnex Motorway, Northern Beaches Hospital, etc.

Clients

The team at Project Lawyers has acted for licensed hotels, medical centres, restaurants, landscaping businesses, car dealerships, trucking companies, retail outlets, commercial premises, industrial warehouses, residential and rural land owners, and multi-lot strata schemes, etc.

We advise clients on the processes and procedures associated with the compulsory acquisition of land and business interests, easements, rights of way and related interests. We provide advice on:

- Compensation entitlements under the Just Terms Act.
- Market value and the concepts of 'severance', 'betterment' and 'injurious affection'.
- Disturbance claims permitted under the Just Terms Act and other heads of compensation as applicable (special value, severance, disadvantaged).
- Valuation considerations relating to specific business interests affected by the acquisition process, including advice on business relocation and re-establishment verse extinguishment
- Negotiations with acquiring authorities.
- The making of 'hardship applications' under the Just Terms Act and the threshold requirements to be addressed.
- Dispute resolution (see also Land and Environment Court Applications and Appeals).

Strategic Approach

Valuation is an imprecise science, with valuation opinions often polarised (unsurprisingly, with government-appointed valuers producing more conservative conclusions to those of their applicant-appointed counterparts). With that reality in mind, our consistent approach to the negotiations phase of the resumption process and, if required, in review proceedings in the NSW Land and Environment Court, can be summarised as follows:

- Prepare and present a robust and well supported compensation claim based on the best available market evidence.
- Adopt supportable valuation methodologies, mindful of the NSW Land and Environment Court's general approach to more creative methodologies (where more conventional methodologies are otherwise available).
- Present the claim as if the land owner or business owner will not hesitate, if required, to take the matter on appeal to the NSW Land and Environment Court if not satisfied with the final offer presented by the acquiring authority or the award of compensation determined by the Valuer-General.
- Settle on the best available commercial terms, where appropriate.

Planning and Environment

The assessment of market value, in relation to land claims, typically requires a comprehensive understanding of all relevant planning considerations, including the concept of 'underlying zoning', the concept of 'highest and best use' and short-to-medium term redevelopment potential considerations. The team at Project Lawyers has extensive experience in all aspects of planning and environmental law, providing advice and legal services to a diverse group of entities within the private sector, including:

- Development applications, modification applications, State Significant Development and State Significant Infrastructure.
- Development agreements and voluntary planning agreements under the Environmental Planning and Assessment Act 1979.
- Compulsory acquisition negotiations and land valuation disputes.
- Land contamination and remediation, site audits and voluntary management proposals.
- Developer contributions.
- Critical habitat and the operation of threatened species conservation legislation at both State and Federal level.
- Environmental audits, due diligence, governance and risk management and environmental impact assessment.
- Environmental protection licences and waste management.

Strata Renewal and Strata Law

Strata law is an evolving practice area which has been subject to several changes introduced in November 2016, including the ability for owners to redevelop or collectively sell their schemes following a 75% majority utilising the process of 'Strata Renewal'.

Strata renewal is a procedurally complex area – that is, there are many legislative requirements that must be carried out (including required meetings, and development of associated documents and the strata renewal plan) prior to a matter reaching the Land and Environment Court for determination.

Proceedings for strata renewal are commenced in Class 3 of the Court. The team at Project Lawyers has extensive experience in both strata law and class 3 proceedings in the Land and Environment Court relating to the compulsory acquisition of properties and businesses, which has uniquely equipped us to provide industry leading advice to lot owners, owners corporations and developers on the intricacies of strata renewal plans and strata renewal proceedings in the Land and Environment Court.

These types of matters will incorporate the procedures set out in the Strata Schemes Development Act 2015 (NSW) (the Act) and provision for compensation value determined in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (NSW), subject to the modifications prescribed by the regulations.

Importantly, the Act provides that if a strata renewal proposal or strata renewal plan lapses under Part 10 of the Act, a person cannot give the proposal, or another strata renewal proposal that is substantially similar to that proposal, to an owners corporation within 12 months after the day the proposal or plan lapses.

The team at Project Lawyers has extensive experience in all aspects of strata renewal and strata law, providing advice and legal services on areas including:

- Building defects and building alterations
- Appeals in relation to strata certificates and strata development contracts
- Strata related disputes and litigation
- Development and termination of strata schemes
- Management of strata schemes
- Matters involving the strata committee or building management committee
- Common Property exclusive use rights
- Development rights during the 'Initial period'
- Strata Management Statements
- Common property repair works
- Meeting procedures, voting and unit entitlements

Dispute Resolution

The team at Project Lawyers frequently appear in the NSW Land and Environment Court. We have extensive experience in the full spectrum of planning and environment disputes, including:

- Challenges to compensation entitlements and valuation determinations in Class 3 of the NSW Land and Environment Court (see below).
- Merit appeals against refusals and deemed refusals of development applications and modification applications in Class 1 of the NSW Land and Environment Court.
- Declaratory relief and applications for judicial review.
- Acting on defended prosecutions.
- Easement and access disputes.

Professional Recognition

The team at Project Lawyers regularly present at industry and client seminars on topical issues associated with planning law in NSW, resumption law and strata reform. Anthony Perkins is also a regular presenter at the University of NSW's continuing legal education program on planning reform and resumption law in NSW.

Compulsory Acquisition Negotiations – Recent and Current

*Indicates matters that went on appeal to the NSW Land and Environment Court (challenging the award of compensation determined by the Valuer-General), whether ongoing or subsequently settled via a s34 conciliation conference or contested hearing.	
<i>Parramatta Light Rail (Transport for NSW)</i>	
Pettig Part 214 George Street, Parramatta NSW (Residential Freehold)	2018-19
Fraser 5 Barney Street, North Parramatta NSW (Commercial Freehold)*	2018-19
<i>Mulgoa Road Corridor Upgrade (Transport for NSW)</i>	
Big Country Developments Pty Ltd Part 261-269 Mulgoa Road, Jamisontown NSW (Licenced Hotel, Motel and Restaurants Freehold)*	2018-20
<i>Mona Vale Road Upgrade (Roads and Maritime Services)</i>	
Crea 30 Walana Crescent, Mona Vale NSW (Residential Freehold)	2017-18
The Owners - Strata Plan SP70187 Part 90 Mona Vale Road, Mona Vale NSW (Commercial Strata)	2017-18
<i>Pacific Highway Upgrade (Roads and Maritime Services)</i>	
Hoddinott Railway Square, Wyong NSW (Commercial Freehold and Leasehold)	2017-18
<i>The Northern Road Stage 6 Upgrade (Roads and Maritime Services)</i>	
Buhach Part 2700 Elizabeth Drive, Luddenham NSW (Rural Freehold; Drainage Easement)*	2017-18
Buhach Part 2292 The Northern Road, Luddenham NSW (Rural Freehold; Construction Lease)*	
Top Shape Live Christmas Trees Part 2700 Elizabeth Drive, Luddenham NSW (Christmas Tree Farm Leasehold)*	2017-18
<i>Randwick Campus Redevelopment (NSW Health Administration Corporation)</i>	
Hatzitoulousis 30 Eurimbla Avenue, Randwick NSW (Residential Freehold)*	2017-18
Hogan 32 Eurimbla Avenue, Randwick NSW (Residential Freehold)*	2017-18
Wong and Lim 71 and 73 Botany Street, Randwick NSW (Residential Freehold)*	2017-18
Stewart 75 Botany Street, Randwick NSW (Residential Freehold)*	2017-18

<i>Northern Beaches Hospital Road Upgrade Works (Roads and Maritime Services)</i>	
Speter 467 Warringah Road, Frenchs Forest NSW (Medical Services Facility Freehold)*	2015-16
Harcorp Pty Ltd 30-32 Bantry Bay Road, Frenchs Forest NSW (Commercial Freehold)	2015-16
Forest Gourmet Pizza Restaurant Shop 2, 449 Warringah Road, Frenchs Forest NSW (Restaurant Leasehold)	2015-16
Singha Thai Frenchs Forest Pty Ltd t/as Singha Thai Restaurant 40-42 Bantry Bay Road, Frenchs Forest NSW (Restaurant Leasehold)	2015-16
Forest Thai Restaurant Shop 1, 449 Warringah Road, Frenchs Forest NSW (Restaurant Leasehold)	2015-16
Jian Ye Trading Pty Ltd t/as Frenchs Forest Chinese Restaurant First Floor, 42 Bantry Bay Road, Frenchs Forest NSW (Restaurant Leasehold)	2015-16
Kazi & Sons Pty Ltd t/as New India Times Restaurant Shop 6, 32 Bantry Bay Road, Frenchs Forest NSW (Restaurant Leasehold)	2015-16
<i>Sydney Metro City and Southwest (Transport for NSW)</i>	
Det Norske Veritas (Australia) Pty Limited Level 4, 181 Miller Street, North Sydney NSW (Commercial Leasehold)	2016-17
Newtown Dyers & Bleachers Pty Ltd (Standard Universal Group) 1A, 1B and 1C Sydney Steel Road, Marrickville NSW (Industrial Freehold)	2016-17
The New Windsor Hotel Pty Ltd t/as Windsor on Park Hotel 48 Park Street, Sydney NSW (Licenced Hotel Leasehold)	2017-18
Gorwyn Nominees t/as Martin Place Bar Ground Floor, 51 Martin Place, Sydney (Licenced Hotel Leasehold)	2017-18
Active Power Steering Pty Ltd Lot 3, 1-11 Sydenham Road, Marrickville NSW (Industrial Leasehold)	2017-18
Doherty Lots 3-8 DP 78714, 1-11 Sydenham Road, Marrickville NSW (Industrial Freehold)	2017-18
Bursill Cope Street Pty Ltd 124-128 Cope Street, Waterloo NSW (Commercial Freehold)	2017-18
Bursill Sportsgear (Holdings) Pty Ltd t/as Achilles Inflatable Boats 124-128 Cope Street, Waterloo NSW (Sporting Warehouse; Commercial Leasehold)	2017-18
Lee Suite 3, Level 1, 136 Raglan Street, Waterloo NSW (Art Studio; Commercial Leasehold)	2017-18
<i>WestConnex Motorway, Stage Two, St Peters Interchange (St Peters) (Roads and Maritime Services)</i>	
Fleming 78, 78A and 100 Campbell Street, St Peters NSW (Residential Freehold)	2016-17

Chin 130 Princess Highway, St Peters NSW (Residential and Commercial Freehold)*	2016-17
Lee 134 Princess Highway, St Peters NSW (Boarding House; Freehold)	2016-17
Hamori 31 Albert Street, St Peters NSW (Residential Freehold)	2016-17
<i>Epping Town Centre Road and Intersection Upgrade (Roads and Maritime Services)</i>	
Farris Part 18 Epping Road, Epping NSW (Residential Freehold)*	2016-17
<i>Richmond Road and South Street Marsden Park Upgrade Works (Stage 1) (Roads and Maritime Services)</i>	
Constantine Part 230 Grange Avenue, Marsden Park NSW (Residential and Commercial Freehold)*	2015-16
Fiji Tropical Plants Pty Ltd t/as Marsden Park Pots and Plants Part 230 Grange Avenue, Marsden Park NSW (Nursery and Landscaping Outlet; Leasehold)*	2015-16
Sultana Part 5 Vine Street West, Marsden Park NSW (Residential Freehold)	2015-16
Attard Part of 130 South Street, Marsden Park NSW (Rural Freehold)	2016-16
L.A.A. Pty Ltd t/as L.A. Fencing & Gates Part 130 South Street, Marsden Park NSW (Freehold and Leasehold)	2016-17
<i>WestConnex Motorway, Stage One, M4 East (Ashfield and Haberfield) (Roads and Maritime Services)</i>	
Leftey Pty Ltd t/as Debbie Bennett Sportswear 176 Parramatta Road, Ashfield NSW (Clothing Warehouse; Freehold and Leasehold)	2015-16
APS Property Management Pty Ltd 219-225 Parramatta Road, Haberfield NSW (Proposed Medical Centre; Commercial Freehold)*	2015-16
Family Lahood Pty Ltd t/as Lahood Motors 219-225 Parramatta Road, Haberfield NSW (Car Yard; Commercial Leasehold)*	2015-16
Chen 233 Parramatta Road, Haberfield NSW (Commercial; Freehold)*	2015-16
Sonar Australia Pty Ltd 231, 233, 235-237 Parramatta Road, Haberfield NSW (Commercial and Residential Freehold)*	2015-16
Sonar Trading Pty Ltd 235-237 Parramatta Road, Haberfield NSW (Commercial Leasehold)*	2015-16
Ken Carroll Investments t/as Ken Carroll Wholesale 253-255 Parramatta Road, Haberfield NSW (Car Yard; Commercial Leasehold)	2016-17

Rowe's Properties Pty Ltd 150 Parramatta Road, Ashfield NSW (Commercial Freehold)	2016-17
Ashfield Vehicles Pty Ltd t/as Cars by the Park 150 Parramatta Road, Ashfield NSW (Car Yard; Commercial Leasehold)	2016-17
Mansor 6 Allen Street, Homebush NSW (Residential Freehold)	2016-17
Miscellaneous	
Constantine Blacktown City Council Resumption of 51 Glengarrie Road, Marsden Park NSW (Rural Freehold)*	2015-16
European Kitchen Appliances Pty Ltd WestConnex Delivery Authority Extinguishment of easement over 90 Burrows Road, Alexandria NSW (Warehouse and Showroom; Commercial Freehold)	2015-16
Best Western Coachman's Inn Motel RMS Resumption of Part 1 Littlebourne Street, Bathurst NSW (Motel; Commercial Leasehold)	2015-16
Delta T Corp Property Group Pty Ltd RMS Resumption of Part 924-938 Central Coast Highway, Forresters Beach NSW (Residential Freehold)	2015-16
Hong RMS Resumption of Part 20 Angus Road, Schofields NSW (Rural Freehold)*	2015-16
Hall Blacktown City Council Resumption of 10 Withers Road, Kellyville NSW (Residential Freehold)	2015-16
Croghan Blacktown City Council Resumption of Part 1568 Windsor Road, Vineyard NSW (Rural Freehold)*	2016-17
Lapa RMS Resumption of 1065 The Northern Road, Bringelly NSW (Rural Freehold)	2016-17
Mookhy RMS Resumption of 1146 The Northern Road, Bringelly NSW (Rural Freehold)	2017-18
Field Hills Shire Council Resumption of Part 52 Terry Road, Box Hill NSW (Rural Freehold)	2017-18
Hayward and Demarco Sydney Water Corp Acquisition of Easement over 227 Grange Avenue, Marsden Park NSW (Drainage Infrastructure; Commercial Freehold)	2017-18
Iglu Pty Ltd Transport for NSW Compulsory Acquisition of 60-78 Regent Street, Redfern NSW (Subterranean Infrastructure; Commercial Freehold)	2017-18

Strata Renewal Negotiations – Recent and Current

The Owners – Strata Plan No 30398 5-11 Hollywood Avenue, Bondi Junction NSW	2017-20
The Owners – Strata Plan No 8695 5 Colindia Avenue, Neutral Bay NSW	2019-2020
The Owners – Strata Plan No 12915 5 Coolong Road, Vaucluse NSW	2020
The Owners – Strata Plan No 9264 159-161 Epping Road, Macquarie Park NSW	2018
The Owners – Strata Plan No 2049 60 Great Western Highway, Parramatta NSW	2018-2019
The Owners – Strata Plan No 6666 1-3 Cottonwood Crescent, Macquarie Park NSW	2018
The Owners – Strata Plan No 6877 2-4 Lachlan Avenue, Macquarie Park NSW	2018
The Owners – Strata Plan No 6586 9 Cottonwood Crescent, Macquarie Park NSW	2018
The Owners – Strata Plan No 6678 8 Lachlan Avenue, Macquarie Park NSW	2018
The Owners – Strata Plan No 15464 7 Cottonwood Crescent, Macquarie Park NSW	2018
The Owners – Strata Plan No 16733 5 Cottonwood Crescent, Macquarie Park NSW	2018
The Owners – Strata Plan No 22698 10 Lachlan Avenue, Macquarie Park NSW	2018

Land and Environment Court (Class 3 Proceedings) – Recent and Current

The jurisdiction of the NSW Land and Environment Court is divided into various categories or classes of matters. Where a person or business is dissatisfied with the award of compensation determined by the Valuer-General in connection with the compulsory acquisition of land, that person or business is entitled to have that determination reviewed by a judge of the Land and Environment Court, in what is known as ‘Class 3’ of the Court’s jurisdiction. Class 3 of the Court’s jurisdiction is unique, in so far as it represents the only forum in which a dissatisfied applicant may go to have their compensation reviewed by a third party.

APS Property Management v Roads and Maritime Services. NSWLEC Proceedings No.2016/30103

Big Country Developments Pty Ltd v Transport for NSW. NSWLEC Proceedings No.2020/302817

Buhach t/as Top Shape Live Christmas Trees v Roads and Maritime Service. NSWLEC Proceedings No.2019/33587

Buhach v Transport for NSW. NSWLEC Proceedings No.2019/75642

Buhach v Transport for NSW. NSWLEC Proceedings No.2019/75655

Capuano v Roads and Maritime Services. NSWLEC Proceedings No.2016/254877

Capuano v Roads and Maritime Services [2018] NSWLEC 59

Carroll v Roads and Maritime Services. NSWLEC Proceedings No.2016/30121

Chen v Roads and Maritime Services. NSWLEC Proceedings No.2016/30110

Chin v Roads and Maritime Services. NSWLEC Proceedings No.2016/254877

Constantine v Blacktown City Council (No 2) [2016] NSWLEC 81

Constantine v Blacktown City Council [2016] NSWLEC 56

Constantine v Blacktown City Council. NSWLEC Proceedings No.2015/30549

Constantine v Roads & Maritime Services [2015] NSWLEC 1295

Croghan v Blacktown City Council. NSWLEC Proceedings No.2016/357169

Croghan v Blacktown City Council (No 2) [2019] NSWLEC 9

Croghan v Blacktown City Council [2019] NSWCA 248

Croghan v Blacktown City Council [2019] NSWLEC 2

Evans v Roads and Maritime Services. NSWLEC Proceedings No.2016/254873

Family Lahood Pty Ltd v Roads and Maritime Services. NSWLEC Proceedings No.2016/30114

Farris v Roads and Maritime Services. NSWLEC Proceedings No.2017/205588

Farris v Roads and Maritime Services [2017] NSWLEC 1545

Fraser v Transport for NSW. NSWLEC Proceedings No.2018/374213

Fraser v Transport for NSW [2019] NSWLEC 1257
Hatzitoulousis v Health Administration Corporation. NSWLEC Proceedings No.2018/314606
Hatzivasiliou v Roads and Maritime Services. NSWLEC Proceedings No.2017/30123
Hatzivasiliou v Roads and Maritime Services [2017] NSWLEC 9
Hayward and Demarco v Sydney Water Corporation. NSWLEC Proceedings No.2018/168127
Hayward v Sydney Water Corporation [2019] NSWLEC 87
Hogan v Health Administration Corporation. NSWLEC Proceedings No.2018/314598
Letfallah v Roads and Maritime Services. NSWLEC Proceedings No.2016/257198
Pan v Roads and Maritime Services. NSWLEC Proceedings No.2018/347085
Sonar Australia v Roads and Maritime Services. NSWLEC Proceedings No.2016/30111
Sonar Trading v Roads and Maritime Services. NSWLEC Proceedings No.2016/30279
Speter v Roads and Maritime Service. NSWLEC Proceedings No.2015/31214
Speter v Roads and Maritime Services [2016] NSWLEC 128
Stewart v Health Administration Corporation. NSWLEC Proceedings No.2018/377289
Stewart v Health Administration Corporation [2019] NSWLEC 1553
Wong and Lim v Health Administration Corporation. NSWLEC Proceedings No.2018/339360
Wong and Lim v Health Administration Corporation. NSWLEC Proceedings No.2018/339347
Wong v Health Administration Corporation [2019] NSWLEC 1442
Wong v Health Administration Corporation [2019] NSWLEC 1443
Zheng v Roads and Maritime Services. NSWLEC Proceedings No.2016/30122
Zheng v Roads and Maritime Services [2017] NSWLEC 77
Zhu v Roads and Maritime Services. NSWLEC Proceedings No.2016/30112

Publications on Resumption Law - Recent

The team at Project Lawyers produce a range of publications in their specialist areas of expertise designed to keep you informed about legal developments potentially relevant to your project, business or personal affairs. These publications are for general information purposes only. Please contact our team should you require any information regarding the contents of these publications.

Offers of Compromise in Class 3 Proceedings in the Land and Environment Court – The NSW Court of Appeal clarifies the Issue

20 April 2014

Land Owner Denied Compensation for the Construction of a Tunnel under his Property

20 August 2016

Introduction of ‘Buy Back’ Option for Dispossessed Land Owners

10 March 2017

Hardship Claims under the Just Terms Act – New Right of Review

25 March 2017

Remaining in Occupation after your Property is Compulsorily Acquired – Are you Required to Pay Rent to the Acquiring Authority?

28 March 2017

Stamp Duty Claims associated with the Compulsorily Acquisition of Land

10 April 2017

Land Tax Claims under the Just Terms Act

2 July 2017

Resolving Doubts in Favour of the Dispossessed – When the Principles of “Caruso” are Engaged

5 July 2017

Update on Stamp Duty and Land Tax Claims under the Just Terms Act

14 June 2018

NSW Supreme Court Weighs in on a Determination of the Valuer-General

1 August 2018

Update on Cost Orders in Class 3 Proceedings in the NSW Land and Environment Court

18 November 2019

The Compulsory Acquisition of Land under Contract for Sale and Compensation Considerations

19 November 2019

Further articles on Resumption Law and General Planning Law are available on our website

www.projectlawyers.com.au