

Court Proceedings

On 11 November 2010 His Honour Biscoe J handed down judgment in the Land and Environment Court proceedings brought by the Parks and Playground Movement Inc to stop the removal of fig trees from Laman Street.

Orders

The court ordered that:

- Parks and Playground Movement Inc's application be dismissed
- The interlocutory injunction granted on 17 September 2010 be continued to 18 November 2010 to allow that Parks and Playground Movement Inc time to consider whether they wish to appeal the decision.

The Issues

Under the *Roads Act* 1993 Section 88 a roads authority can remove a tree on a public road which, in its opinion, is a road hazard 'despite any other Act or law to the contrary'.

Council argued that the power under section 88 of the *Roads Act* 1993 to remove trees renders any contrary provisions of the *Environmental Planning and Assessment Act* 1979 void for the purposes of that section.

Parks and Playground Movement Inc argued that Council's decision to remove the trees was ineffective because section 88 of the *Roads Act* operates together with the planning restrictions in section 76A in Part 4 or sections 111 and 112 in Part 5 of the *Environmental Planning and Assessment Act* 1979. That is, that it requires development consent, or alternatively, requires Council consider the potential environmental impact.

Parks and Playground Movement Inc also contended that the removal of the trees would be likely to significantly affect threatened species or their habitats. Council argued that to the extent (if any) that Part 5 of *Environmental Planning and Assessment Act* 1979 was relevant; there would be no significant impact on the threatened species or their habitats.

The Court's Reasons

In finding for Council the court held that:

- Section 88 of the *Roads Act* 1993 has precedence over any requirements under Part 4 or Part 5 of the *Environmental Planning and Assessment Act* 1979
- As a result Council has the power to remove the trees without development consent or assessment of any potential environmental impact

- The removal of the trees is unlikely to significantly affect threatened trees or their habitats
- In the event the court's interpretation of section 88 of the *Roads Act* 1993 is in error, there is no basis under the *Environmental Planning and Assessment Act* 1979 to halt the proposed removal.

A Significant Legal Precedent

The potential conflict between the two Acts is a significant legal issue that has not been the subject of prior judicial review. The Court's decision is an important precedent that resolves the perceived tension between the two Acts and establishes that roads authorities are able to exercise their *Roads Act* power to preserve public safety without reference to the *EPA Act*.

Appeal

On 16 November 2010 Council received notice of PPM's intention to appeal the decision.