



Unlawful notices and lawful prosecutions: Recent decisions of the QLD District and Supreme Courts

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Agenda

- **Voidable decisions**
- **Competing court decisions**
- **Recent cases in Queensland**
 - *Conquest & Anor v Bundaberg Regional Council*
 - *Gold Coast City Council v Lear & Anor*
- **Practical implications for local governments**

Voidable decisions

Voidable: Able to be set aside by a court for a defect in the decision or act. A decision or action is voidable if it involves a legal defect which renders it liable to be set aside later. In administrative law, a voidable decision is legally effective until it is set aside: *Director of Public Prosecutions v Head* [1959] AC 83.

When is a decision able to be set aside?



Competing court decisions

UK: *R v Wicks* [1998] AC 92

- Cannot challenge decision

NSW: *Gray v Woollahra Municipal Council* [2004] NSWSC 112

- Can challenge decision

Queensland: *Howe & Anor v Harris* (unreported District Court Maroochydore 13 May 2005)

- Can challenge decision

Tasmania: *Krulow v Glamorgan Spring Bay Council* (2013) 23 Tas R 264

- Cannot challenge decision



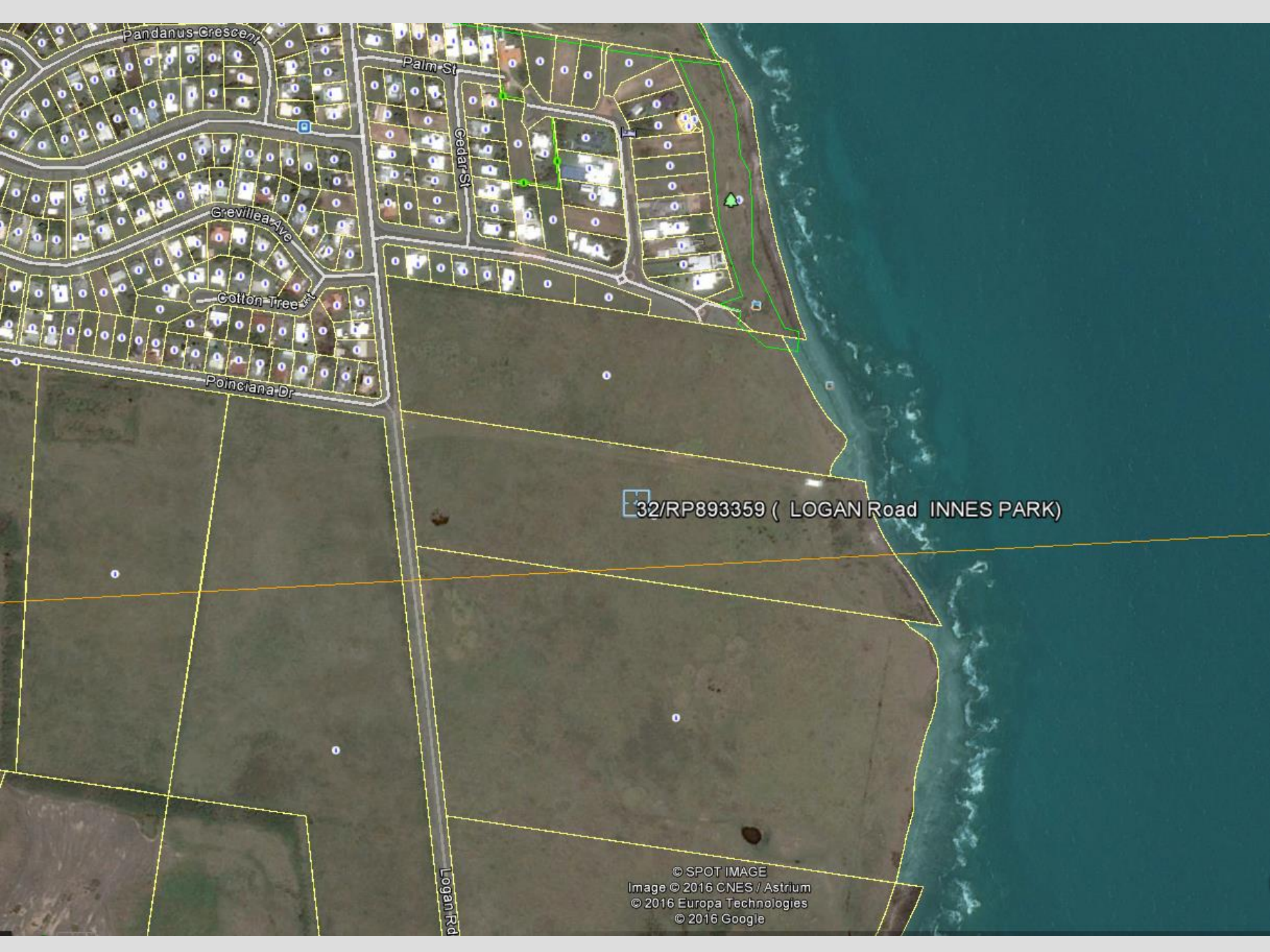
Recent cases in Queensland



Conquest & Anor v Bundaberg Regional Council [2016] QCA 203

Immediate points to take notice of:

- Queensland Supreme Court of Appeal – 3 judges
- Concurring decisions – no dissent
- Conviction; conviction upheld x 2
- Solicitors and counsel for each party
- No application for special leave to the High Court



32/RP893359 (LOGAN Road INNES PARK)

Conquest & Anor v Bundaberg Regional Council [2016] QCA 203

- Key points to take away
 - A valid enforcement notice is not conditional on a person having committed a development offence
 - The commission of the development offence is not an element that Council needs to be proved for a successful prosecution (note the important distinction)
 - Presumption of due performance (exercise with caution)

Gold Coast City Council v Lear & Anor [2016] QDC 215

Immediate points to take notice of:

- Queensland District Court appeal
- Judge Everson
- Continuation of issues raised in *Conquest*
- No case to answer appealed by Council



6 Mitchell Ct

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Gold Coast City Council v Lear & Anor *[2016] QDC 215*

'It is not in the public interest that the recipient of an enforcement notice be permitted to do nothing in response to it and challenge its validity much later, when the offence of failing to comply with the enforcement notice finally becomes before the Magistrates Court. The legislative regime provides more than ample redress to the recipient of an enforcement notice who wishes to challenge it. The legislature has prescribed the only challenges available in unambiguous terms without recourse to a privative clause.'



Practical implications for local governments

Avoid giving a defective enforcement notice

- But an enforcement notice valid on its face does not prevent a successful prosecution

Basis of reasonable belief

- No need to prove that the person committed a development offence
- Only need to hold a reasonable belief that a person has committed or is committing a development offence

Specific requirements of enforcement notice – What the person is required to do

- Be specific in your requirements
- Who, what, where, when, why, how
- Avoid (if possible) wording that leaves open interpretation ('practicable and reasonable steps')
- Do not require the person to do something that is unlawful

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