

## JASON LAZARUS

Jason was called to the Bar in March 2004, after spending a year as the associate to the Hon Justice John Lehane of the Federal Court, and then practising as a solicitor and senior associate for 5 years at Clayton Utz.

He practises in a wide range of jurisdictions and areas of law, ranging from general commercial and property litigation and equity to planning and environmental law. As a busy senior junior, he appears unled or with a junior in most of these cases.

Jason was named in the most recent issues of Doyle's Guide as "Pre-eminent" junior counsel in "Leading Planning & Environment Barristers – NSW, 2017" and "Leading Planning & Environment Barristers - Australia, 2016".

He has served on a Professional Conduct Committee for the NSW Bar Association from 2016.

### Qualifications / admission

BA, LLB\* (UNSW) – 1996

Admitted to practice – 1998

Called to the Bar – 2004

### Practice areas

- commercial & equity
- environmental & planning law
- real property
- competition & consumer law
- corporations
- administrative law

### Significant cases

#### Property/equity

- *Tim Barr Pty Ltd v Narui Gold Coast Ltd* (2010) 14 BPR 27,605 (long-running and complex dispute about enforceability of a lease, including numerous important interlocutory judgments, eg (2009) 75 NSWLR 380 and (2009) 258 ALR 598)
- *First Mortgage Managed Investments Pty Ltd v Pittman* [2014] NSWCA 110 and [2012] NSWSC 1332 (successful challenge to loan agreement and mortgage under the *Contracts Review Act* 1980)
- *Project 28 Pty Ltd v Barr* [2005] NSWCA 240 and [2005] NSWCA 420 (maintenance and champerty)

\* Hons equiv.

- *Bondlake Pty Ltd v Owners-Strata Plan No.60285* (2005) 62 NSWLR 158 (validity of caretaker agreement in a strata development)
- *Colbert v MacDonald* [2016] NSWSC 1291 (successful judicial review challenge to decision of Strata Schemes Adjudicator relating to an exclusive use by-law)
- *McDonald v Wills* [2014] NSWSC 1183 and [2015] NSWSC 329 (action for enforcement of right of way in Mosman)
- *Natuna Pty Ltd v Cook* [2007] NSWSC 121 (Supreme Court land development case)
- *Dulbunty v Dulbunty* [2010] NSWSC 1465 (complex trust dispute involving a family trust)
- *Ferella v Otvosi* (2005) 64 NSWLR 101 (enforceability of restrictive covenant and extinguishment under *Conveyancing Act*, s.89)
- *Lennard v Jessica Estates Pty Ltd* (2008) 71 NSWLR 306 [2008] NSWCA 121 (enforceability of restrictive covenant having regard to a s.28 clause in the LEP)
- *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* (2012) 16 BPR 31,257 [2012] NSWCA 445 (complex s.88K application, including subsequent s.88K application in the LEC, *Moorebank Recyclers Pty Ltd v Liverpool City Council (No.2)* [2013] NSWLEC 93)
- *Trevlind Pty Ltd v BMP Manufacturing Pty Ltd* [2008] NSWSC 603 (easement and drainage dispute)
- *Dowidar v Bektas* [2008] NSWSC 1380 (conveyancing dispute concerning sale of child care centre)
- *Public Trustee v Smith* [2008] NSWSC 397 (case concerning validity of bequest of property in Randwick by way of conventional estoppel)
- Numerous current matters in the Real Property List of the NSW Supreme Court

### Commercial

- *Amlin Corporate Member Ltd v Austcorp Project (No.20) Pty Ltd* (2014) 311 ALR 222 [2014] FCAFC 78 (construction of insurance policy)
- *McHugh v Australian Jockey Club Ltd* (2014) 314 ALR 20 [2014] FCAFC 45 (significant restraint of trade and Part IV case concerning the use of artificial insemination in the thoroughbred racing industry, High Court special leave application refused: [2014] HCA Trans 238)
- *Sprayworx Pty Ltd v Homag Australia Pty Ltd* [2016] NSWSC 51 and [2016] NSWSC 84 (highly complex dispute concerning a defective sanding machine, settled after 3 weeks of hearing)
- *Ezystay Systems Pty Ltd v Link2 Pty Ltd* [2016] NSWCA 317 (breach of confidence action against former director of student accommodation business company)
- *Rockdale City Council v Calibre Construction Corp Pty Ltd* [2015] NSWSC 1980 (enforcement of expert determination relating to a works-in-kind agreement)
- *Day v Mercedes-Benz Australia Pacific Pty Ltd* [2011] FCA 454 (long-running franchise dispute, ultimately settled)
- *Hawes v Dean* [2014] NSWCA 380 (series of complex property development joint venture disputes)

- *Gales Holdings Pty Ltd v Tweed Shire Council* (2013) 85 NSWLR 514 [2013] NSWCA 382 (significant nuisance and foreseeability case; special leave refused [2014] HCATrans 142)
- *Hornsby Shire Council v Valuer-General of NSW* [2008] NSWSC 1179 and [2012] NSWSC 894 (long-running negligence, fraud and administrative law proceedings, ultimately settled)
- *Hung v Warner* [2013] FCAFC 48 (dispute about ownership of convertible bonds, special leave refused: [2013] HCA Trans 280)
- *W&P Reedy Pty Ltd v Macadams Baking Systems Pty Ltd* [2007] NSWCA 146 (statutory demand case)
- *Ryding v Myles* [2012] NSWSC 153 (contract dispute involving a lease of a quarry)
- *Domaine Steel River Pty Ltd v Ocean Street Holdings Pty Ltd* (specific performance and contempt proceedings brought by Mirvac against a Nathan Tinkler company)
- *Staway Pty Ltd (in liq) (receivers and managers appointed)* [2013] NSWSC 819 (successful application to commence Commercial List proceedings in the name of a company in liquidation; Commercial List proceedings are ongoing)
- *Sellar v Lasotav Pty Ltd* [2008] FCA 1612 and [2008] FCA 1766 (oppression suit)
- *Wylie v Tarrison Pty Ltd* [2007] NSWCA 184 (contract construction suit concerning the sale of Sydney Harbour Seaplanes)
- *Carr v Swart* [2007] NSWCA 337 (international joint venture dispute and solicitor's liability case, special leave refused)

#### Planning/Environmental

- *Hunters Hill Council v Minister for Local Government* [2016] NSWLEC 124 (acted for 4 local councils in partially successful challenge to NSW Government's proposal to amalgamate them with other councils; judgment reserved in Court of Appeal)
- *Friends of Tumblebee Inc v ATB Morton Pty Ltd (No. 2)* [2016] NSWLEC 16 (successful challenge to development consent granted for clearing of forest in the Hunter Economic Zone on the basis of failure to obtain an SIS relating to the Regent Honeyeater).
- *Hunter Development Corporation v Save Our Rail NSW Inc* [2015] NSWCA 346 and (2016) 220 LGERA 73 [2016] NSWCA 375 (successful defence of challenge to truncation of the Sydney to Newcastle rail line; special leave refused)
- *Friends of King Edward Park Inc v Newcastle City Council (No 2)* [2015] NSWLEC 76 (successful challenge to development consent and Plan of Management raising significant issues concerning State recreational reserves)
- *Presbyterian Church (NSW) Property Trust v Woollabra Municipal Council* [2015] NSWLEC 47 (successful defence of Scots' proposal to transfer part of its elementary school to residential land)
- *The Presbyterian Church (NSW) Property Trust v Woollabra Municipal Council* [2015] NSWLEC 1245 (successful defence of Scots' application to modify two development consents to increase the cap on student numbers at its Victoria Road campus)
- *Cheetham v Goulburn Motorcycle Club Inc* [2017] NSWCA 83 (successful defence to judicial review challenge to permissibility of motorcycle facility)

- *Rafailidis v Camden Council* [2015] NSWCA 185 (appeal from finding of contempt in relation to orders requiring the demolition of part of a residence)
- *Bankstown City Council v Ramahi* (2016) 216 LGERA 385 (successful enforcement proceeding relating to issue of invalid complying development certificates)
- *CSKS Holdings Pty Ltd v Woollabra Council* (2014) 205 LGERA 207 (successful defence of claim for mandamus relating to the development of the Paddington Bowls Club)
- *Council of City of Sydney v Wilson Parking Australia Pty Ltd* [2015] NSWLEC 42 and [2015] NSWLEC 84 (significant existing use rights case relating to a carpark in Sydney)
- *Moorebank Recyclers Pty Ltd v Benedict Industries Pty Ltd* [2015] NSWLEC 40 (successful challenge to grant of consent by JRPP to substantial marina development in Moorebank raising issues of breach of SEPP 55)
- *Benedict Industries Pty Ltd v Minister for Planning* [2016] NSWLEC 122 (case relating to lapsing of development consent)
- *Liverpool City Council v Moorebank Recyclers Pty Ltd* [2017] NSWLEC 53 (successful defence of merits appeal against a State significant materials recycling facility development)
- *RTA v Ashfield Municipal Council* (2005) 141 LGERA 278 [2005] NSWCA 234 (case concerning the respective powers of the RTA and local councils under the *Roads Act* 1993)
- *Bat Advocacy NSW Inc. v Minister for Environment, Protection, Heritage and the Arts* (2011) 180 LGERA 1999 [2011] FCAFC 59 (challenge to Minister's decision to relocate bats from the Sydney Botanical Gardens)
- *Minister for Planning v Gales Holdings Pty Ltd* (2006) 146 LGERA 450 [2006] NSWCA 212 (validity of State significant aquaculture facility development consent)
- *Shellharbour City Council v Minister for Planning* (2011) 189 LGERA 348 [2011] NSWCA 195 and (2012) 187 LGERA 427 (challenge to Part 3A concept plan approval on the basis of lack of high biodiversity significance)
- *Castle Constructions Pty Ltd v North Sydney Council* (2007) 155 LGERA 52 [2007] NSWCA 164 (appeal raising issues of inconsistency in planning instruments and principles of apprehended bias)
- *Drake-Brockman v Minister for Planning* (2007) 158 LGERA 349 (challenge to Part 3A concept plan approval for the CUB site at Broadway)
- *Hunter Community Environment Centre Inc. v Minister for Planning* (2012) 194 LGERA 255 (judicial review of approval of major power station rehabilitation project)
- *Dobrobotoff v Bennic* (2013) 194 LGERA 17 (significant case concerning legality of short-term holiday rental accommodation on the NSW Central Coast)
- *Hill Top Residents Action Group Inc. v Minister for Planning* (2009) 171 LGERA 247 and (2010) 176 LGERA 20 and subsequent decisions) challenge to validity to Part 3A approval for shooting range and subsequent litigation relating to enforcement of the approval)
- *Ku-ring-gai Council v Sydney West Joint Regional Planning Panel (No.2)* (2010) 181 LGERA 11 (challenge to significant residential flat development consent granted by JRPP)

- *Rivers SOS Inc. v Minister for Planning* (2009) 178 LGERA 347 (challenge to Part 3A long wall mining project approval)
- *Rossi v Living Choice Australia Ltd* [2015] NSWCA 244 (complex proceedings for judicial review of JRPP development consent and its enforcement)
- *Najask Pty Ltd v Palerang Council* (2009) 165 LGERA 171 [2009] NSWCA 39 (case about caravan park permissibility)
- *Puruse Pty Ltd v Council of the City of Sydney (No.3)* [2010] NSWLEC 35 (modification of development consent in respect of hotel trading hours)
- *Sharples v Minister for Local Government* (2008) 166 LGERA 302 (challenge to Minister's decision to increase council rates)
- *Martin Morris & Jones Pty Ltd v Shoalhaven City Council* [2012] NSWLEC 1280 (significant class 1 case concerning new Dan Murphy's outlet in Nowra)
- *Wollongong City Council v Vic Vellar Nominees Pty Ltd* (2010) 178 LGERA 445 (series of disputes concerning permissibility of development)
- *Woolworths v Wyong Shire Council* [2005] NSWLEC 400 (challenge to grant of development consent granted in favour of rival of Woolworths)

#### Compulsory acquisitions

- *Tolson v RMS* [2014] HCATrans 263 (High Court Special Leave application concerning offsets in resumption statutes)
- *RTA v Leichhardt Council* [2007] HCATrans 260 and (2008) 158 LGERA 218 (important case dealing with construction of the *Land Acquisition (Just Terms Compensation) Act* 1991)
- *El Boustani v Minister Administering the Environmental Planning and Assessment Act 1979* (2014) 199 LGERA 198 [2014] NSWCA 33 (significant decision on construction of s.61 of the *Just Terms Act*)
- *Sutherland Shire Council v Sydney Water* [2008] NSWLEC 303
- *Breen v Sutherland Shire Council* [2008] NSWLEC 15
- *Penrith City Council v Sydney Water Corp* [2009] NSWLEC 2
- *Chircop v Transport for New South Wales* [2014] NSWLEC 63
- *Taylor v Port Macquarie-Hastings Council* [2010] NSWLEC 113 and (2010) 175 LGERA 189
- *Miller v Roads & Maritime Services* (highly complex resumption case relating to the acquisition of part of a dairy farm in Berry, settled after 1½ weeks of hearing)
- Numerous current resumption cases relating to various projects including WestConnex, the Sydney Metro, Pacific Highway upgrade and the expansion of a Commonwealth Department of Defence facility near Whyalla in South Australia

#### Other

- *Australians for Sustainable Development Inc. v Barangaroo Delivery Authority* [2013] NSWADT 252 (complex *GIPA Act* proceedings relating to the Barangaroo project)
- *Hall v van der Poel* [2009] NSWCA 436 (personal injury case raising significant issues of construction of the *Civil Liability Act* 2002)

- *Aleksic v The Secretary, Department of Defence* [2016] AATA 239 (representative action in the AAT for compensation arising out of the use of the Salt Ash Weapons Range)
- *Australian Performing Rights Association Ltd v Monster Communications Pty Ltd* (2006) 71 IPR 212 (Federal Court copyright dispute concerning mobile ring tones)
- *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council* [2009] NSWCA 151 (claim under the *Aboriginal Land Rights Act* 1983 concerning residential land)
- *Darwinjung Local Aboriginal Land Council v Minister Administering the Crown Lands Act* (2006) 149 LGERA 162

### Previous experience

- 1998 Associate to the Hon. Justice John Lehane of the Federal Court of Australia
- 1999-2004 Solicitor and Senior Associate, Clayton Utz. Involved in a number of high profile matters, including:
- acting for the Reserve Bank in its successful defence of Federal Court proceedings brought by Visa and MasterCard challenging the Reserve Bank's reforms of credit card schemes
  - acting for Sydney Airport in substantial Federal Court proceedings brought by a number of international airlines relating to landing charges and the SA2000 re-development of Sydney Airport
  - acting for the SRA in relation to claims brought by the Airport Link Company in connection with the Airport Line train service
  - acting for the NSW racing industry in a series of commercial arbitrations against the TAB

### Interests outside the law

- Tennis (member of the Sydney Maccabi Tennis Club)
- Golf (member of The Lakes Golf Club)
- Travel
- Politics and history
- Music of all kinds

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