



What's News?

Property, Planning & Environment

15 December 2009

Latest News

Articles

Legislation

Cases

Practice notes/directions

Latest news

National

Jones Lang LaSalle report indicates refocus on aged buildings

28 November 2009

The report claims that with less development of new commercial office buildings in Australia, the age profile of existing buildings will become an important focus in CBD markets. Forty-six per cent of Sydney stock is more than 30 years old, 38 per cent in Melbourne, 35 per cent in Brisbane and 32 per cent in Perth [More...](#)

Government Capital Gains Tax relief widened to assist irrigators and operators

2 December 2009

The Government will provide a capital gains tax (CGT) roll-over for water entitlements and water allocations. The roll over will also be available when water entitlements are unbundled. A water entitlement or allocation could take the form of a statutory licence relating to water, such as a water access entitlement [More...](#)

Ministers announce decisions on Dixon and retention leases offshore

2 December 2009

The Western Australian Department for Mines and Petroleum (DMP) has issued notices of intent to grant seven Browse retention lease renewals. The Commonwealth Minister for Resources and Energy said both decisions reflect the long-standing intent of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to achieve commercial development of Australia's vast offshore gas resources at the earliest possible time [More...](#)

National Occupational Licensing Scheme proposed

23 November 2009

Draft legislation that will govern how a proposed new national licensing scheme for a range of occupations will work has recently been released for public comment. Property agents (meaning estate agents and conveyancers) will be part of the new scheme, though it is not scheduled to start before mid-2012 (for estate agents) and mid-2013 (for conveyancers) [More...](#)

Calls for organic waste policy

1 December 2009

The Federal Government needs to set a national target on organic waste recovery and rapidly increase greenhouse gas capture on landfill sites, according to the Waste Management Association of Australia [More...](#)

Labor and the Coalition Economists blast Queensland privatisation

24 November 2009

Economists identified with both Labor and the Coalition have released an open letter attacking the Queensland Government's \$16 billion port, rail and motorway privatisation program and the \$1.9 million television and letterbox advertising campaign that supports it [More...](#)

Victoria

Emergency Alert warning system switched on

2 December 2009

After successful community testing in Victoria, a new national telephone-based warning system for life-threatening emergencies – Emergency Alert – is live and ready for use [More...](#)

NAB's legal action to block sale of pubs

5 December 2009

National Australia Bank has launched legal action in the Supreme Court of Victoria against the former Hedley Leisure and Gaming Property Fund in an effort to halt moves by the listed pub owner to sell up to \$36 million worth of properties [More...](#)

VFF up-beat about water trading case

3 December 2009

The Victorian Farmers Federation (VFF) is confident the state will win a High Court challenge over its cap on water trading [More...](#)

Whats News? - Property, Planning & Environment

15 December 2009

New Epping station as South Morang project steams on

3 December 2009

One year on from the release of the Brumby Government's \$38 billion Victorian Transport Plan, tenders have been called for the construction of the \$650 million South Morang Rail Extension project [More...](#)

Victorian median property prices on the rise

2 December 2009

Victoria's median house price increased by 3.3 per cent to \$341,000 in the June 2009 quarter, according to the latest Victorian Property Sales Report released by Environment and Climate Change Minister Gavin Jennings today [More...](#)

Company pays \$200,000 for grassland clearing

25 November 2009

In a win for the environment, a construction company will pay a total of \$200,000 towards conservation initiatives after breaching national and Victorian environment laws at an industrial site in Ardeer, Melbourne. The undertaking follows a departmental investigation into the company clearing protected native grasslands and causing a significant impact on nationally threatened species [More...](#)

Victorian Government takes action on Royal Commission building priorities interim report

24 November 2009

The Victorian Government supports all seven recommendations of the 2009 Victorian Bushfires Royal Commission interim report into priorities for building in bushfire-prone areas [More...](#)

New South Wales

Sydney mayors slam metro plan

25 November 2009

Mayors from across Sydney have called on the New South Wales Government to scrap its CBD Metro plan [More...](#)

Sydney growth area booms with new business parks

2 December 2009

An industrial estate at Greystanes that would support 2,000 workers and 800 construction jobs has been approved, and comment is being sought on a proposed industrial precinct at Marsden Park that could support another 10,000 jobs [More...](#)

ICAC to review new lobbyist guidelines

24 November 2009

New rules to regulate contact between the Department of Planning and registered lobbyists, developers, community groups and opponents came into effect on 1 December. Planning Minister, Kristina Keneally, said the rules add a new level of transparency and accountability to the NSW Planning system and with lobbyists, developers, community groups and opponents.

A new approach to urban renewal needed to create better places

25 December 2009

Creation of a new state level Urban Renewal Commission is needed to implement quality urban renewal and help manage Sydney's future growth, according to the Property Council of Australia. In a new paper released today, the Property Council has unveiled a 10-point Urban Renewal Action Plan to streamline the delivery of urban renewal across Sydney [More...](#)

Queensland

Retail Shop Leases Tribunal was absorbed into the new Queensland Civil and Administrative Tribunal

3 December 2009

On 1 December 2009 all matters which had commenced in the RSLT are automatically transferred to QCAT, in a bid to provide accessible, cost effective and informal tribunal services for the industry [More...](#)

Queensland defies backlash on \$16 billion assets sell-off

5 December 2009

The Queensland Government is refusing to bow to fierce public opposition to its privatisation plans, saying a blow-out in the budget deficit justifies its \$16 billion sale of assets. A change in the way the State Government accounted for a federal contribution to the Gold Coast rapid transit project was the chief cause of the deficit blow-out [More...](#)

Changes to number of pokies for Queensland

30 November 2009

A new scheme that will provide incentives for clubs to reduce the number of poker machines was today launched, following legislative amendments to the Gaming Machine Act 1991. The scheme offers an alternative revenue stream to clubs, where instead of operating gaming machines themselves, they can lease out entitlements to other clubs [More...](#)

New Sustainable Planning Act commences

27 November 2009

Minister for Infrastructure and Planning Stirling Hinchliffe has announced today the Sustainable Planning Act 2009 (SPA) will replace the Integrated Planning Act 1997 on December 18 2009. The new QPPs under the SPA introduce common planning definitions and terms that is flexible enough to apply across all local government planning schemes, and will provide more certainty for the community about development in their area.

Whats News? - Property, Planning & Environment

15 December 2009

Articles

National

Easements: obstructions to a right of way and the right to maintain and improve an easement

Author: Butt, Peter

Source: Australian Law Journal, December 2009, pp792-795

Unreasonably withholding consent to assignment of lease

Author: Butt, Peter

Source: Australian Law Journal, December 2009, pp796-797

Climate change risks to Australia's coast / Department of Climate Change

Canberra: Dept. of Climate Change, 2009

Coasts: Climate change (Anthropogenic); Risk management; Environmental impact; Weather; Natural disasters; Sea levels; Interstate comparisons [More...](#)

Legislation

National

Great Barrier Reef Marine Park Regulations 1983

Incorporating amendments to SLI 2009 No. 304 (25/11/09) [More...](#)

Trans-Tasman Proceedings Bill 2009

A Bill for an Act relating to proceedings in Australian and New Zealand courts and tribunals, and for related purposes (26/11/2009) [More...](#)

International Arbitration Amendment Bill 2009

A Bill for an Act to amend the law in relation to international arbitration, and for related purposes (26/11/2009)

Queensland

Bills

Radiation Safety Amendment Bill 2009

Acts

52 Integrity Act 2009

53 Criminal Organisation Act 2009

Regulations

2661 Water Resource (Barron) Amendment Plan (No. 1) 2009

269 Proclamation commencing certain provision of the Personal Property Securities (Commonwealth Powers) Act 2009

270 Gaming Machine Amendment Regulation (No. 1) 2009

271 Proclamation commencing certain provisions of the Gambling and Other Legislation Amendment Act 2009

272 Liquor Amendment Regulation (No. 3) 2009

273 Proclamation commencing remaining provisions of the Great Barrier Reef Protection Amendment Act 2009

275 Proclamation commencing remaining provisions of the State Penalties Enforcement and Other Legislation Amendment Act 2009

276 Electrical Safety Amendment Regulation (No. 2) 2009

278 Queensland Civil and Administrative Tribunal Amendment Regulation (No. 1) 2009

279 Public Trustee Amendment Regulation (No. 7) 2009

280 Sustainable Planning Regulation 2009

281 Proclamation commencing remaining provisions of the Sustainable Planning Act 2009

2821

1 A regulatory impact statement and explanatory note accompany the subordinate legislation

283 Wild Rivers Amendment Regulation (No. 1) 2009

288 State Penalties Enforcement Amendment Regulation (No. 3) 2009

www.legislation.qld.gov.au

Whats News? - Property, Planning & Environment

15 December 2009

Cases

Victoria

Talacko & Ors v Talacko [2009] VSC 533

Equity – Breach of terms of settlement – Entitlement to enter judgment for equitable compensation for breach of fiduciary duty – Failure to share with siblings family properties recovered by way of restitution after the fall of the former communist regimes in Czechoslovakia and East Germany. Equity – Principles for assessment of equitable compensation for breach of fiduciary duty – Robust approach due to defendant's conduct making accurate assessment impossible – No allowance for defendant's personal exertion – Date for valuation of properties subject to fiduciary duty – Selection of exchange rate. Penalty – Whether principles apply to an assessment of equitable compensation by the Court – Whether principles apply where there is an admission of liability for relief sought. Contract – Construction – Uncertainty – Election and repudiation where plaintiffs pursued parallel proceedings in the Czech Republic – Damages for breach. Special referee – Valuation of properties – Adoption of special referee's report – Rule 50.04 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic). PRACTICE AND PROCEDURE – Preliminary question tried before final hearing – Question cannot be re-agitated at final hearing – Rule 47.04 of the Rules. [More...](#)

Glenelg SC v Printz Pty Ltd (includes Summary) (Red Dot) [2009] VCAT 2477

Interpretation of section 6(3)(d) Planning and Environment Act 1987 – use protected not development Interpretation of section 28(2)(e) Interpretation of Legislation Act 1984 – there is no accrued right to complete construction of an as-of-right development if the planning scheme changes before construction is complete. Mrocki v Port Phillip CC (No 2) [2008] VCAT 2304 followed. [More...](#)

Myers v South Gippsland SC (No 2) (includes Summary) (Red Dot) [2009] VCAT 2414

Consideration of a coastal hazard vulnerability assessment for a two lot subdivision application. Application of Managing Coastal Hazards and the Coastal Impacts of Climate Change General Practice Note December 2008. [More...](#)

Verve501 Pty Ltd v Owners Corporation 1 Plan No 512424P & Ors (Real Property) [2009] VCAT 2400

Application to strike out proceedings as vexatious – Victorian Civil and Administrative Tribunal Act 1998 s. 75 - proceeding must be manifestly hopeless – Owners Corporation Act 2006 s. 18(1) – owners corporation must be authorised by a special resolution to bring legal proceedings – Counterclaim – whether separate proceedings – whether special resolution required – no requirement for special resolution where proceedings are to recover fees or other money or enforce rules – most of counterclaim purporting to be to enforce rules – not appropriate to strike out that part of the counterclaim – balance of counterclaim claiming damages for breach of fiduciary duty - no special resolution obtained – that part of the counterclaim struck out – open to Respondents to raise similar issues by way of defence – leave given to amend defence and counterclaim [More...](#)

Geelong Community for Good Life Inc v Environment Protection Authority & Anor (General) [2009] VCAT 2429

Freedom of Information Act 1982 ss 33, 34, 38, 50(4) – Environment Protection Act 1970 s 60 Geelong Community for Good Life Inc (GCGL) sought access to documents under the Freedom of Information Act 1982 (FOI Act) from the Environment Protection Authority (EPA) in relation to EPA licence EM 30626, issued to Shell Refining (Australia) Pty Ltd (Shell) for its oil refinery premises in Corio, and the Shell Geelong Refinery Environment Improvement Plan, 2004. [More...](#)

Landes v Vicroads (General) [2009] VCAT 2403

General List; Freedom of Information Act 1982; Advice by Chief Executive of Statutory Authority to Minister relative to implementation of extension of arterial road 'clearway' system; Whether exempt from release under Section 30(1) Freedom of Information Act 1982; Public interest in integrity of deliberative processes; No public interest favouring release because public debate on subject capable without reference to disputed document [More...](#)

Love v State of Victoria & Anor (No 2) [2009] VSC 531

Costs – Unsuccessful claim for declaratory and injunctive relief and damages in respect of planning and other decisions leading to compulsory acquisition of land – Defendants each made separate Calderbank offers to plaintiff – Not necessary to show that rejection of Calderbank offer was "highly" or "grossly" unreasonable – Matters relevant to "reasonableness" of the offer – Each rejection by the plaintiff was unreasonable – Application of Calderbank principles to administrative law proceedings – Claim for solicitor-client costs from the outset does not succeed – Solicitor-client costs should be paid from the expiry of the Calderbank offers and on a party-party basis for the prior period. Injunctive relief and damages in respect of various planning and other decisions that had led to or involved the compulsory acquisition of certain land for the construction of the Craigieburn Bypass [More...](#)

Whats News? - Property, Planning & Environment

15 December 2009

Rise Home Loans Pty Ltd v Dickinson & Anor [2009] VSC 555

Contract – Sale of land – Novation – Nomination clause – Named purchaser makes nomination of substitute purchaser – Allegations of tortious and contractual wrongdoing against vendors – Whether nominee can sue – Legal effect of nomination. Damages – Breach of contract – Tort – Causation – Alleged misdescription of land – Adverse possession claim – Purchaser’s own knowledge of discrepancy between fencing and title boundary – Vendor’s summary judgment application – Sustainability of purchaser’s claim [More...](#)

Bonleaf Pty Ltd v Harmony Imports Pty Ltd & Ors (Retail Tenancies) [2009] VCAT 2475

Guarantee of lease – deed executed with common seal of tenant company as well as signed by guarantors – whether “delivered” as deed of guarantors. Consideration – if guarantee was not the deed of the guarantors, past consideration only. Avoidance of guarantee – misrepresentations by landlord’s predecessor in title – guarantors induced by misrepresentations to sign the guarantee. Misleading and deceptive conduct – whether claim of contravention of Fair Trading Act 1999, raised as a defence, was statute barred – Fair Trading Act 1999 s.159(3) Jurisdiction – guarantee a supply of services to creditor – Fair Trading Act 1999 s.3, s.107. [More...](#)

Kallara Care Pty Ltd v A & M Meeuwse Pty Ltd (Retail Tenancies) [2009] VCAT 2476

Costs – whether retail tenancies dispute – s81(1)(c) of the Retail Leases Act 2009 – s109 of the Victorian Civil and Administrative Tribunal Act 1998 [More...](#)

Queensland

Reef Cove Resort Limited, Re [2009] QSC 378

Corporations – winding up – winding up in insolvency – statutory demand – other cases – where the applicant applied to wind up the respondent company on the ground of insolvency – where the respondent is a foreign company registered under Part 5B.2 Division 2 of the Corporations Act 2001 (Cth) – where the respondent purported to appoint administrators and purported to execute a Deed of Company Arrangement – whether the respondent is a company to which the provisions of the Corporations Act relating to external administration apply – whether the respondent ought to be wound up [More...](#)

Petroleum Design & Management Pty Limited & Anor v Whitsunday Regional Council & Ors [2009] QPEC 115

Developer appeal against refusal of proposal for a service station (and shop) – Council now supportive – first co-respondent by election (a trade competitor) asserts conflict with applicable 2000 Planning Scheme (lack of need shown generally or to justify notional rezoning from medium density residential) and with supervening 2009 Planning Scheme which envisaged such proposals in the Industrial Zone, not the new Commercial Zone) – weight to be accorded to 2009 scheme considered – whether 2000 planning arrangements overtaken by events – whether the appellant Woolworths should be struck out of the appeal as not an “applicant” [More...](#)

Gaven Developments Pty Ltd v Scenic Rim Regional Council & Ors [2009] QPEC 119

Preliminary issue whether changes to appellant developer’s proposal were “only minor change” – of four buildings (medical centre, specialty shops, retail showroom and 2000 m2 supermarket) the three smallest were to be relocated and reduced in size, further the “medical centre” was to be split in two, the smaller component designated “pharmacy” – no earlier mention of pharmacy – whether this was a change at all – site’s frontage was to a State controlled road and Main Roads Department required a roundabout outside the access – where many submitters (mostly adverse) and co-respondents by election – appellant receptive to allowing joinder of further co-respondents [More...](#)

Sea Breeze (Qld) Pty Ltd v Gladstone Regional Council [2009] QPEC 129

Directions made for purposes of an appeal in absence of respondent Council, which had entered an appearance - no proper application for directions filed (rather a draft order indexed as an application) - in interest of saving costs, directions (allowing three months for the first step) made - Council to be notified it could seek changes under “liberty to apply” [More...](#)

Whats News? - Property, Planning & Environment

15 December 2009

Practice notes/directions

Queensland

Queensland Planning Provisions and QPlan and Forms

Public consultation on Queensland Planning Provisions closed on Monday 23 November and feedback is now being reviewed to inform the final version. Councils can expect to have copies of this before the new Act commences. For more information on the Sustainable Planning Act 2009 and related material visit www.legislation.qld.gov.au or www.dip.qld.gov.au

Queensland Sustainability declaration and reference guide

The sustainability declaration, fact sheet and an associated reference guide to assist in completing the form are available on the Department of Infrastructure and Planning's website. A sustainability declaration is a compulsory checklist that must be completed by sellers of houses, townhouses or units that are marketed for sale from 1 January 2010 (02 December 2009)
Release of sustainability declaration and reference guide.

Whats News? - Property, Planning & Environment

15 December 2009

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Disclaimer

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