



What's News?

Property, Planning & Environment

16 February 2010

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Latest news

National

Green home loan scheme in shambles

4 February 2010

The federal Environment Department has been accused of bungling its popular green home assessment program, while giving favourable treatment to one company [More...](#)

Australian land use rules drive house prices up

27 January 2010

The sixth annual Demographia International Housing Affordability Survey looks at 272 metropolitan markets in Australia, the US, the UK, Canada, Ireland and New Zealand. The report blames a loss of housing affordability in Sydney and Melbourne on land use regulations which have virtually eliminated affordable land for building [More...](#)

NIC: Water diversion limits spark compo call

26 January 2010

The chief executive of the National Irrigators Council says that irrigators have a property right - if that's taken away from them because governments decide that the environment needs more water, then they should be compensated for that. The new limits will come into effect across most states in 2014 and Victoria in 2019 [More...](#)

WA: Environmental monitoring 'tardy and superficial'

25 January 2010

The environmental monitoring program in the wake of last year's oil spill in the Timor Sea has been described as 'superficial' with the University of Western Australia's submission says the 'tardy' response to the spill means it will be hard to detect some of the environmental impacts [More...](#)

HIA: Six-Stars on New Homes Fail on Emissions

22 January 2010

The decision by the Building Ministers' Forum to mandate 6-star energy efficiency requirements in new dwellings will have next to no effect on curbing Greenhouse Gas Emissions, but will make new homes more expensive and less affordable. The lack of demonstrated net benefits in the Regulation Impact Statement casts a doubt over the purpose and objective of future regulatory impact assessments [More...](#)

Fishing company worried about marine parks

29 January 2010

One of Australia's biggest fishing companies says it expects a raw deal from bio-regional planning currently being conducted by the Federal Department of Environment, with five marine regions around Australia under review in a bid to find and preserve aquatic ecosystems for future generations including the Coral Sea [More...](#)

Victoria

Victorian building approvals up 110 per cent

4 February 2010

Victoria's reputation as the economic engine room of the nation received another shot in the arm today with the value of building approvals increasing 109.7 per cent over the course of 2009 despite the impact of the global financial crisis.

Mildura marina development resumes

2 February 2010

Work will begin on the next stage of a \$120 million marina in Mildura after the global financial crisis slowed progress [More...](#)

New guidelines for bushfire roadblocks

4 February 2010

Police have released new guidelines for the use of roadblocks during bushfires.

The new guidelines come after confrontations between Horsham police and residents wanting to return to their homes during the Black Saturday fires [More...](#)

Concern grows over Stockyard Hill wind farm: Mayor

4 February 2010

The Pyrenees Shire Mayor, David Clarke, says community concern about wind farms is intensifying [More...](#)

First Pipes laid to bring desalinated water to Melbourne

4 February 2010

The first of 84km of pipes that will deliver desalinated water to Melbourne from the end of next year have been laid in Melbourne's south-east this week [More...](#)

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Unveiling Victoria's unique heritage

4 February 2010

Victorian residents and visitors will gain a new understanding of the many layers of Victoria's unique heritage thanks to a new Brumby Labor Government resource. Victoria's Framework of Historical Themes is available at www.heritage.vic.gov.au [More...](#)

Consortium builds five new Melbourne schools

3 February 2010

Abigroup, as part of the Axiom Education Victoria consortium, has built five new schools across the greater metropolitan Melbourne area [More...](#)

Vic govt to review smart meters

3 February 2010

The Victorian government has ordered a review of controversial smart meters after the state auditor-general warned electricity consumers would be worse off [More...](#)

Council continues the fight against clearways

2 February 2010

The Stonnington Council is stiffening its opposition to extended clearway hours proposed by the State Government [More...](#)

Panel rejects Barwon Heads change

28 January 2010

An independent panel has recommended to City Hall that Barwon Heads land owned by Bob Macafee not be developed and has also rejected a community bid to change the zone of a Thirteenth Beach development. The panel heard submissions to an amendment that if approved would implement the Barwon Heads Structure Plan into the Greater Geelong Planning Scheme [More...](#)

Building height limits approved

28 January 2010

A Limit on building heights for Port Lincoln's city centre has been approved by Urban Development and Planning Minister Paul Holloway restricting development along most of the foreshore to three storeys. The Building Height and Design (City Centre Zone) Development Plan Amendment (DPA) was approved last week, putting a limit on building heights in the central business district for the first time [More...](#)

Bilfinger Berger Services wins O&M contract for Peninsula Link

28 January 2010

Specialist engineering, construction and asset management contractor, Bilfinger Berger Services, has been awarded a 25-year operations and maintenance (O&M) contract for the \$759 million toll-free Peninsula Link project in Victoria.

New South Wales

NSW councils miss out on infrastructure funding

28 January 2010

Sydney councils have shunned the State Government's \$200 million infrastructure fund, say developers. The NSW Government scheme provides interest loans to local governments to fact-track local infrastructure projects www.governmentnews.com.au

Queensland

Vacant office space rises in SE Queensland

4 February 2010

The Property Council of Australia (PCA) report shows the office vacancy rate in Brisbane's CBD rose to 11.3 per cent in the six months to January - the highest in 15 years.

The Gold Coast recorded south-east Queensland's highest vacancy figure [More...](#)

Gold Coast Council sinks golf course housing development

3 February 2010

The Gold Coast City Council's planning committee has refused to approve a residential development on a golf course at Clear Island Waters, stating the concept did not comply with city planning criteria including building heights and accommodation density and there were concerns about flooding [More...](#)

Qld has some of the most expensive residential land

3 February 2010

The HIA-RP Data Residential Land Report for the 2009 September quarter ranks four Queensland regions among the 10 most expensive regions for residential land in Australia [More...](#)

South-East Queensland homes among world's most unaffordable

27 January 2010

The South East has ranked among the least affordable places to live in the world (Demographia International Housing Affordability Survey) The authors blame the "devastating impact of land use regulation" for driving up unaffordability, and the false belief that higher population densities would reduce future infrastructure costs [More...](#)

Airport Link work noise under investigation

22 January 2010

Queensland's co-ordinator general has launched investigations into both BrisConnections and Thiess John Holland for possible breaches of noise levels and hours of operation for the \$4.8 billion Airport Link project. The companies could face hefty fines over claims they have failed to shield residents from construction noise. [More...](#)

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Articles

National

A bunfight at the market – Murphy and Fremantle Markets Pty Ltd

Source: Webb, Eileen

Source: Australian Property Law Bulletin, 2010, Vol 24, No 4, pp42-25

Attempt to extinguish easement in gross fails

Author: Duncan, Bill

Source: Australian Property Law Bulletin, 2010, Vol 24, No 4, pp46-47

How long can a binding death benefit nomination last for: SMSF

Author: Figot, Bryce; Butler, Daniel

Source: Australian Property Law Bulletin, 2010, Vol 24, No 4, pp8-50

How long can a binding death benefit nomination last for: SMSF

Author: Figot, Bryce; Butler, Daniel

Source: Australian Property Law Bulletin, 2010, Vol 24, No 4, pp8-50

Victoria

Victoria's new lease duty

Author: John Riley, John; Wood, Elizabeth

Source: Australian Property Law Bulletin, 2010, Vol 24, No 4, pp51-53

Queensland

Sustainability in Queensland given legislative and coercive force

Author: Kris Byrne, Kris

Source: Australian Property Law Bulletin, 2010, Vol 24, No 4, pp54-56

Practice notes/directions

National

National Electronic Conveyancing System development

A new National Electronic Conveyancing System (NECS) has been announced by the Queensland, New South Wales and Victorian Governments. The system intends to help legal practitioners electronically prepare land title dealings and related instruments needed to register changes in property ownership and interests, settle financial transactions, comply with the tax and duty requirements, lodge land title instruments for registration and receive prompt confirmation of the registration www.necs.gov.au

Public Comment: Private Bushfire Shelters Draft Technical Standard

25 January 2010

The draft technical standard for the design of private use bushfire bunkers (now referred to as private bushfire shelters) approved by the Australian Building Codes Board (Sept 2009) has been released and is available for public comment [More...](#)

BCA 2010 Energy Efficiency Provisions Revised

22 January 2010

New provisions have been announced by the Acting Environment for greenhouse pollution reduction to be included in the national Building Code of Australia (BCA) for 2010 and developed at the request of the Council of Australian Governments (COAG). They further enhance and expand the existing energy efficiency provisions in the BCA [More...](#)

Victoria

VIC: Proposed Forests (Recreation) Regulations 2010 out for public comment

The proposed Forests (Recreation) Regulations 2010 seek to manage recreational activities so that environmental impacts on forests are minimised. The Regulatory Impact Statement (RIS) has been prepared to assess the costs and benefits of the proposed regulations and feasible alternatives. Public comments are invited on the RIS and accompanying regulations. All comments must be in writing and must be received by no later than 5:00 pm on 4 March 2010. All submissions will be treated as public documents [More...](#)

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VIC: Evaluation of the Mornington Peninsula and Western Port Biosphere Reserve - Online survey

A requirement of the Victorian Government's Biosphere Reserve Policy is that the performance of this biosphere reserve is evaluated. The evaluation is taking place between February and March 2010. We'd like to hear your view about its effectiveness in terms of its aim to promote solutions to reconcile the conservation of biodiversity with sustainable land use by answering a few questions.

Please complete the online survey and submit by 12 March 2010 [More...](#)

Submissions for invited for

Modernising Victoria's Planning Act: Draft Bill for comment - Comments invited by Friday 12 February 2010.

Clause 52.11 (Home Occupation) changes - Comments invited by Friday 26 February 2010.

Public consultation on accessibility features in housing - Comments invited by Friday 5 March 2010.

Government moves to cut green tape

The Brumby Labor Government has foreshadowed cuts to unnecessary green tape to make it easier and cheaper for Victorian businesses to meet their environmental obligations (22 January 2010) [More...](#)

New South Wales

The State stimulus measure

The NSW Housing Construction Acceleration Plan (HCAP) – was to end on December 31, but it will now be extended to June 30, 2010 (215 January 2010) [More...](#)

Queensland

Revised sustainability declaration now available

A simplified, new sustainability declaration is now available to ensure homeowners can supply important information to potential buyers. Under laws in place since January 1, anyone selling a house, townhouse or unit must provide a declaration listing their home's sustainable features under the Building Act 1975. From February 4 the new form, fact sheet and a reference guide will be available at www.dip.qld.gov.au

Media Release: [More...](#)

Sustainability declaration form [More...](#)

Sustainability declaration fact sheet [More...](#)

Sustainability declaration reference guide [More...](#) - this guide provides information to help you complete the sustainability declaration.

Legislation

Commonwealth

Murray-Darling Basin Agreement (Adjusting Valley Accounts and State Transfer Accounts) Protocol 2010

This protocol establishes the operational process by which water trade between valleys and between states is supported by bulk transfers of water between valleys and states (25/01/10)

Date Registered: 25/01/2010 [More...](#)

National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2010

The instrument concerns matters of detail relating to requirements for qualifications, knowledge, training or experience requirements to be met by prospective applicants for registration as a greenhouse and energy auditor (02/02/2010).

Victoria

Statutory Rule

No. 3: Mineral Resources (Sustainable Development) (Extractive Industries)

Regulations 2010

Date of Making: 27/01/2010 Commencement: 27/01/2010

Proclamations

Act No. 57: Energy and Resources Legislation Amendment Act 2009

Assent: 21/10/2009 SG (No. 366) 21/10/2009 p. 1

Commencement: Pt 1 (ss 1, 2), Pt 2 (s. 3), ss 4, 5, 9-11, Pt 4 (ss 13-16), Pt 5 (ss 17, 18), Pt

6 (ss 19-22) on 13/12/2009: GG 10/12/09 p. 3215; Ss 28, 30, 31, Pt 9 (ss 35-41) on 01/01/2010: GG 10/12/09 p. 3215; Ss 23, 24, 32 on 27/01/2010: SG (No. 33) 27/1/2010 p. 1

Bills Introduced and Second Read in the first House

Liquor Control Reform Amendment (ANZAC Day) Bill
Offshore Petroleum and Greenhouse Gas Storage Bill

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Cases

Commonwealth

Mandurah Enterprises Pty Ltd v Western Australian Planning Commission [2010] HCA 2

Real property – Compulsory acquisition – Parts of various lots reserved under town planning scheme for Primary Regional Roads – Whole lots subsequently acquired for purpose of railways and primary regional roads – Whether land reserved for one purpose could be acquired for another purpose – Whether valid acquisition under s 13 of Town Planning and Development Act 1928 (WA) – Whether valid acquisition under s 161 of Land Administration Act 1997 (WA) (“Land Act”) appeal allowed in part.

Victoria

Ranges SC (includes Summary) (Red Dot) [2009] VCAT 2746

Reasons why decision is of interest or significance
Law – issue of interpretation or application - Interpretation and application of the precautionary principle - Policy – interpretation or application of policy- Planning policy relating to the protection of water supply catchments – consideration of Guidelines: planning permit applications in open, potable water catchments (May 2009) – consideration of the Australian Drinking Water Guidelines – planning policy relating to rural/agricultural issues and land management practice [More...](#)

Muller v Mildura Rural CC (includes Summary) (Red Dot) [2010] VCAT 42

Consent order refused for extension of permit in circumstances where permitted use and development now prohibited
Law – issue of interpretation or application - Application of principles in Kantor v Murrindindi Shire Council – permit extension refused – decisions should not be made based on sympathy - Practice or procedure – consideration of individual instance or systemic issues - Consideration of circumstances where consent order will not be made by Tribunal – Dowling v City of Malvern (1983) 1 PABR 86 endorsed and followed [More...](#)

Pattas v Stonnington CC (Land Valuation) [2010] VCAT 24

Catchwords: Application for review of valuations of Shop 3 forming part of a larger property; consideration of historic building and affect on development and value; consideration of basis of apportionment of value [More...](#)

CP1 Limited v Commissioner of State Revenue (Taxation) [2010] VCAT 34

Taxation List; Liability for duty under land rich landholder provisions of Chapter 3 Duties Act 2000; Whether duty calculated by reference to single relevant transaction requiring lodgement of acquisition notice or by reference to previous acquisition over three year period; Duties Act 2000 as in force 1 June 2004 Sections 72, 73, 76, 78 and 80 [More...](#)

Laverton Property Developments Pty Ltd & Anor v Commissioner of State Revenue (Taxation) [2010] VCAT 35

Taxation List; Liability for transfer of units in private unit trust under Duties Act 2000 Chapter 3; Whether apparent unit holders actual unit holders; Whether backdated transfers to be treated as ‘rectification’ rather than changes in beneficial interest; Whether unit holders to be regarded as holding units on constructive trust or ultimate acquirer; Units in unit trust deed redeemed effective second half of 2004 pursuant to redemption agreement made 27 September 2004; Transitional provisions on commencement of State Taxation Acts (Tax Reform) Act 2004; Duties Act Schedule 2 Clause 20; Unit holders holding units beneficially; No occasion for rectification; Assessment affirmed subject to operation of transitional provisions [More...](#)

Tynan Nominees Pty Ltd v Darebin CC & Ors [2010] VCAT 43

Victorian Civil and Administrative Tribunal Act 1998 s 119; application of ‘slip rule’ where slip or omission arises from mistake by a party rather than the Tribunal; whether appropriate to correct misdescription two years after original order; correction order declined [More...](#)

Herzog Group of Companies v Glen Eira CC [2010] VCAT 44

Planning and Environment Act 1987 s149B, ss 60(4)&(5) and 62(1)(aa); declaration re effect and enforceability of covenant; extent of Tribunal jurisdiction to make declaration under s149B; effect of covenant on permit condition [More...](#)

U108 Pty Ltd v Sing Fan & Ors [2010] VSC 12

Vendor and purchaser - Purchasers failed to complete on due date – Rescission notices – Whether valid – First rescission notice specified wrong due date – Second rescission notice specified correct due date, but covering correspondence asserted that the due date specified in the first rescission notice was correct – First rescission notice not expressly withdrawn – Other confusing conduct by vendor as to due date for settlement – Held: reasonable purchasers might entertain doubts as to whether the first rescission notice was being relied upon – Rescission notices declared invalid – Catley v Watson (1981) V Conv R 54-003; Central Pacific (Campus) Pty Ltd v Staged Developments Australia Pty Ltd (1998) V Conv R 54-575; Greydae Pty Ltd v Malilane Pty Ltd [2003] VSCA 27; Robinson v Becata Pty Ltd [2004] NSWSC 310 – Transfer of Land Act 1958 (Vic) Seventh Schedule, Table A, General Conditions 5, 6 [More...](#)

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Haxton & Ors v Equuscorp Pty Ltd [2010] VSCA 1

Contracts – Investment schemes – Where investors' loan agreements financed acquisition of licences and leases for blueberry farming investment schemes – Where schemes failed and investors' interests lost – Most loan agreements illegal and unenforceable because not severable from transactions contravening prescribed interest provisions of the Companies Code.

Restitution and Unjust enrichment – Whether lender prima facie entitled to restitution for total failure of consideration – Whether investors' retention of funds unjust – Relevance of terms of unenforceable loan agreements – Their relationship to schemes as a whole – Whether trial judge erred in construction of loan agreements and factual findings – Whether action on the sole enforceable loan agreement statute-barred. Assignment – Whether lender's claim in restitution assignable – Whether rights effectively assigned by deed [More...](#)

Capelli v Shepard & Ors [2010] VSCA 2

Corporations – Managed Investment Schemes – Where 'plainly insolvent' responsible entity of registered schemes ordered to wind them up pursuant to s 601ND Corporations Act 2001 (Cth) – Whether receivers of responsible entity had standing to apply to wind up schemes – Whether schemes non-viable – Whether schemes insolvent – Whether just and equitable to wind up schemes – Whether trees on lease allotments 'scheme property' – Whether scheme constitution definition of 'scheme property' repugnant to statutory definition – Whether primary judge had power to vary priority for costs orders [More...](#)

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Disclaimer

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