



# What's News?

Property, Planning & Environment

16 March 2010

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## Latest news

### National

#### Changes to Commonwealth environmental programs

The Government has announced a series of changes to the administration of the environmental programs to boost safety and improve environmental performance including a consumer hotline. These changes will benefit good green businesses and are bad for the shonky operators who have begun exploiting this market [More...](#)

#### ACCC submits advice on accreditation of state agencies under the water infrastructure charge rules

22 February 2010

The Australian Competition and Consumer Commission has submitted its advice on the accreditation of state agencies by the ACCC under the water infrastructure charge rules (WICR) to the Minister for Climate Change and Water [More...](#)

#### Government revamps clean energy plan

26 February 2010

Stalled large-scale clean energy plants are more likely to be built after the Rudd government announced a dramatic revamp of its widely criticised renewable energy policy. Under the controversial renewable energy target, by splitting the target in two next year, will effectively create a 18 per cent target dedicated to large-scale projects. Another scheme covering small-scale technologies would make up the rest of the 20 per cent [More...](#)

#### Solar complaints are hotting up

27 February 2010

Environment Minister Peter Garrett revealed his department would launch an inspection program of households that had received the \$8000 government grant for installing a solar system. There has been an eightfold rise in complaints about home solar energy systems in the past six months amid claims of dodgy installations, higher bills and unpaid rebates on electricity that has been fed back into the grid [More...](#)

### Victoria

#### Councils sue minister over Melbourne clearways

4 March 2010

The Yarra and Stonnington councils have brought a claim against Roads Minister Tim Pallas and VicRoads alleging mismanagement of the approval process in their decision to extend clearways in inner Melbourne. The claim reportedly has very little chance of success [More...](#)

#### Victorian facilities 'average'

4 March 2010

Victoria's infrastructure is "barely adequate" and does not meet the demands of a growing state, with rail, electricity and water the worst performers, a report card by Engineers Australia has found. Rail infrastructure fared the worst - with a D rating - despite the state government's \$38 billion transport plan [More...](#)

#### Victorian wind farm revived after change of rules

2 March 2010

The decision by AGL and New Zealand's Meridian Energy to forge ahead with the \$800 million project comes after the Rudd government's move last week to revamp its failing renewable energy target scheme. The project, near Hamilton in western Victoria, faces several steps before work begins, including the need for approval by both company's boards [More...](#)

#### Report card slams 'short-term' focus of Vic infrastructure

3 March 2010

Engineers Australia 2010 Victorian Infrastructure Report Card reviewed infrastructure categories across energy, telecommunications, transport and water, showed progress in some areas over the past 5 years, but general concern overall. Recommendations of the report card include an increase in the quantum of funding, addressing population growth and climate change, partnering with the private sector and the allocation of risk within such partnerships [More...](#)

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### Alcoa deal locks in decades of pollution

2 March 2010

Alcoa has signed contracts with generator Loy Yang Power for smelters at Portland and Point Henry, near Geelong, until 2036, the existing power contracts expire in 2016 and 2014. A spokeswoman for Energy Minister Peter Batchelor said the government was not involved in the deal and subsidies would end in 2016, the government would not be picking up Alcoa's costs in the event an emissions trading scheme is introduced [More...](#)

### Victorian median property prices still on the rise

4 March 2010

Victoria's median house price increased from \$348,500 in June 2009 to \$360,000 in the September 2009 quarter, according to the latest Victorian Property Sales Report [More...](#)

### \$12.6m for rural roads a boost for farmers, processors

3 March 2010

A \$12.6 million Victorian Government package will boost road links between local farms and markets, the Premier John Brumby announced today. The funding, part of the Government's successful Local Roads to Market Program, will go toward 54 infrastructure projects worth more than \$26 million in 32 regional and rural councils [More...](#)

### Innovative coal research to share more than \$700,000

3 March 2010

Innovative research projects aimed at developing new technologies to cut greenhouse emissions from brown coal and find new ways to use the resource will share in more than \$700,000 from the Victorian Government [More...](#)

### \$250,000 for Wimmera and Southern Mallee plan

3 March 2010

The Brumby Labor Government today officially announced a grant of \$250,000 to Horsham Rural City Council to assist the region become even more productive and sustainable [More...](#)

### Victorian roads get smarter with new network plans

25 February 2010

New world-leading transport management guidelines will reduce congestion and prioritise public transports routes, bringing the best out of Melbourne's existing road infrastructure, Roads and Ports Minister Tim Pallas announced today. Mr Pallas said the Australian-first Smart Roads operating plans would improve the efficiency of metropolitan road network for all transport modes [More...](#)

### VCAT reforms make justice more accessible

25 February 2010

A major cases list to reduce planning delays and new fee waiver guidelines for low-income earners are two reforms to the Victorian Civil and Administrative Tribunal (VCAT) that will improve access to justice for Victorians [More...](#)

### A cleaner energy future for Melbourne water

23 February 2010

The Brumby Labor Government has welcomed the announcement that power company AGL has won a contract to supply Melbourne Water with renewable electricity for the next 15 years [More...](#)

### New South Wales

#### Minister Acts to Resolve Growth Centre Precinct Delay

1 March 2010

Substantial progress has been made towards finalising the rezoning of two Precincts in Sydney's North West Growth Centre with the most pressing issue being the level of Section 94 contributions, the levy developers must pay to councils to fund delivery of new local infrastructure such as drainage works, parks, local roads, community centres and public libraries [More...](#)

#### \$9.3 million infrastructure boost for Port Macquarie

Minister for Planning, Tony Kelly, has today inspected one of two sites earmarked for infrastructure projects supporting urban development in Port Macquarie. Applications were evaluated by an independent assessment panel and had to meet a set of strict criteria, including the project facilitating development of new housing and employment, and the council can complete the project within 18 months \$9.3 million infrastructure boost for Port Macquarie

### Queensland

#### Whitsunday Hinterland and Mackay new regional plan

5 March 2010

The Whitsunday Hinterland and Mackay (WHAM) regional plan covering the Mackay Regional Council, Isaac Regional Council and Whitsunday Regional Council has the unique position of having the Great Barrier Reef, rare rainforests, thriving industrial centres and some of the nation's most productive agricultural, fishing and mining sectors in close proximity. The regional plan is expected to take more than a year to develop and will provide a planning horizon until 2031 [More...](#)

#### Queensland bows to pressure from billionaire and delays land tax changes

24 February 2010

The Queensland Government will postpone debate on the controversial changes to land tax legislation after a number of industry groups, and billionaire Gerry Harvey and Westfield boss Stephen Lowy, spoke out in protest. The Bill which, if enacted as currently drafted, would have changed the method of valuations under existing legislation and increased future tax bills [More...](#)

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### Industry groups hit at 'land-tax grab'

23 February 2010

Primary industry lobby group AgForce has joined the Property Council, the Chamber of Commerce & Industry Queensland, the Urban Development Institute of Australia and the Shopping Centre Council of Australia in opposing the changes. He said that under the changes, property owners only had 45 days in which to provide full evidence in any appeal against the valuation of their property [More...](#)

### Queensland Councils granted power to slash building costs

22 February 2010

There are councils that still want both a planning approval and separate building approval for duplexes in residential areas in all cases and the government proposes to amend the regulations by the end of March to allow councils to decide on opting into the simplified approval process only for duplexes, by passing a resolution in open council [More...](#)

## Articles

### National

#### Succession to a self-managed super fund

**Author:** Butler, Daniel

**Source:** Australian Property Law Bulletin, 2010, Vol 24, No 5, February, pp62-63

#### Can a binding death benefit nomination specify how a death benefit is paid

**Author:** Figot, Bryce

**Source:** Source: Australian Property Law Bulletin, 2010, Vol 24, No 5, February, pp65-66

#### Competitive cities and climate change / Kamal-Chaoui, Lamia; Roberts, Alexis (eds)

**Source:** Paris: OECD, 2009; 172pp

**Subjects:** Cities and towns; Climate change (Anthropogenic); Sustainable development; Town planning; Energy consumption; Environment policy; Environmental impact; Statistics; Australia overseas comparisons [More...](#)

#### Devastating consequences of failure to comply with statutory disclosure

**Author:** Chambers, Liam

**Source:** Source: Australian Property Law Bulletin, 2010, Vol 24, No 5, February, pp68-70

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### Practice notes/directions

#### Victoria

##### Currently Inviting Submissions

The Coastal Climate Change Advisory Committee has released its Issues and Options Paper and is inviting submissions from interested stakeholders. The Committee is advising the Minister for Planning about how Victoria's land-use planning and development controls can best support the Victorian Government's policy for managing the coastal impacts of climate change. Submissions close on Monday, 26 April 2010.

##### EPA Draft Noise Guidelines - Comments invited by Friday 26 March 2010.

Caravan Park Regulations 2010 Regulatory Impact Statement - Comments invited by 12 April 2010

#### New South Wales

##### New framework for building certification in NSW

1 March 2010

The NSW Government is expanding the State's system of accreditation for building certifiers to include council building certifiers and are the first step towards one system of accreditation for all building certifiers [More...](#)

#### Queensland

##### QLD: New era for sustainable energy units begins

1 March 2010

All new units and those undergoing major renovations will be required to achieve a minimum five stars (out of 10) energy equivalence rating from today to lift environmental standards for all new homes, offices and government buildings in Queensland. The new measure applies to the building shell, roofs, walls, windows and floors [More...](#)

##### QLD: Glass Compliance Reforms for Liquor Licensed Premises

High risk establishments will no longer be able make regular glass receptacles, jugs, bottles or stubbies available to patrons, replacing these with alternatives like toughened, tempered or polycarbonate glassware. Information on guidelines used to determine glassing restrictions are on the OLGR website [More...](#) OLGR compliance officers will incorporate checks on glass use as part of their normal compliance activities, failure to comply means penalties of up to \$10,000 may apply [More...](#)

##### QLD: Comment invited on proposed Queensland Curtis LNG Project

The Coordinator-General commenced consultation today on an application for the Queensland Curtis LNG Project to benefit from the State Development and Public Works Organisation Act 1971 about land access for infrastructure. This is a critical LNG project in a critical industry and QGC is one of the five major LNG consortia vying to develop in and around the south-west Queensland and Gladstone regions and written submissions by 5pm Wednesday, 31 March. The IFS application and materials can be viewed at [www.qclng.com.au/project](http://www.qclng.com.au/project) [More...](#)

##### QLD: Comment invited on proposed Hancock rail corridor

Landowners and residents who would be directly affected by Hancock Coal Pty Ltd's proposed rail corridor, had been invited to have their say. The proponent is now preparing an Environmental Impact Statement (EIS) for the project, which will be released by the Coordinator-General for public comment in late 2010. The public consultation submissions from interested parties will be taken until 5pm on Monday 22 March, 2010. The application can be viewed at [www.hancockcoal.com.au](http://www.hancockcoal.com.au) [More...](#)

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### Legislation

#### National

##### **Offshore Petroleum and Greenhouse Gas Storage (Management of Greenhouse Gas Well Operations) Regulations 2010**

These Regulations develop an objective based system of all down-hole drilling activities associated with greenhouse gas wells and well control equipment, including testing and monitoring equipment  
Number: SLI 2010 No. 28 ( 02/03/2010) [More...](#)

##### **Lands Acquisition Regulations 1989**

Pipeline Authority, lands, Northern Territory, defence housing  
Number: SR 1989 No. 111(04/03/2010) [More...](#)

##### **Australian Climate Change Regulatory Authority Bill 2010**

A Bill for an Act to establish the Australian Climate Change Regulatory Authority, and for other purposes (22/02/2010) [More...](#)

##### **Carbon Pollution Reduction Scheme Bill 2010**

A Bill for an Act to reduce pollution caused by emissions of carbon dioxide and other greenhouse gases, and for other purposes (23/02/2010) [More...](#)

##### **Carbon Pollution Reduction Scheme Amendment (Household Assistance) Bill 2010**

A Bill for an Act to amend the law relating to social security, family assistance, veterans' affairs, military rehabilitation and compensation and taxation, and for related purposes (22/01/10) [More...](#)

##### **Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2010**

A Bill for an Act to deal with consequential matters arising from the enactment of the Carbon Pollution Reduction Scheme Act 2010, and for other purposes (22/02/2010) [More...](#)

##### **Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2010**

A Bill for an Act about CPRS fuel credits, and for related purposes (22/01/10) [More...](#)

##### **Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010**

A Bill for an Act to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006, and for other purposes (22/01/10) [More...](#)

##### **Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010**

A Bill for an Act to amend the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003, and for related purposes (22/01/10) [More...](#)

#### Victoria

##### **Bills Introduced and Second Read in the first House**

Credit (Commonwealth Powers) Bill  
Radiation Amendment Bill  
Statute Law Amendment (National Health Practitioner Regulation) Bill

##### **Acts Assented to**

Transport Integration Act No 6 of 2010  
Assent: 2/03/2010 SG (No. 76) 2/3/2010 p. 1  
Commencement: Ss 1, 2 on 03/03/2010: s. 2(1)

##### **Land (Revocation of Reservations and Other Matters) Act No 81 of 2009**

Assent: 8/12/2009 SG (No. 454) 8/12/2009 p. 1  
Commencement: Pt 1 (ss 1, 2), Pt 3 (ss 9-16), Sch. 1 on 17/12/2009: GG 17/12/2009 p. 3338  
Ss 4-8, Pt 5 (ss 21-24), Pt 6 (ss 25-29), Pt 7 (s. 30), Schs 3-5, 8, 9 on 25/02/2010: GG 25/2/2010 p. 351

##### **Statutory Rules made**

Conservation, Forests and Lands (Contracts) Regulations 2010 SR No 11  
Date of Making: 23/02/2010  
Commencement: 27/02/2010: reg. 3

##### **Victorian Civil and Administrative Tribunal (Fees) Amendment Regulations 2010 SR No 14**

Date of Making: 2/03/2010  
Commencement: 02/03/2010

##### **Building Amendment (Bushfire Construction - Short-term Requirements) Regulations 2010 SR No 15**

Date of Making: 2/03/2010  
Commencement: Regs 1-7, 13 on 09/03/2010: reg. 3(1)  
Regs 8, 9 on 01/05/2010: reg. 3(2)  
Regs 10, 11, 12 on 08/09/2011: reg. 3(3)

##### **Road Safety (General) Amendment Regulations 2010 SR No 16**

Date of Making: 2/03/2010  
Commencement: 02/03/2010  
[www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

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#### Regulations

No 17 Water Resource (Whitsunday) Plan 2010  
 No 18 Water Amendment Regulation (No. 1) 2010  
 No 22 Transport Planning and Coordination Amendment Regulation (No. 1) 2010  
 No 23 Transport Legislation Amendment Regulation (No. 1) 2010  
 No 25 State Penalties Enforcement Amendment Regulation (No. 2) 2010  
 No 30 South-East Queensland Water (Distribution and Retail Restructuring) Notice 2010

#### Acts

No 6 Transport (Rail Safety) Act 2010 (04/03/10)

### Cases

#### Victoria

#### **Rosenberg & Anor v Fifteenth Eestin Nominees Pty Ltd & Ors (No 2) [2010] VSC 38**

Trusts – Extent of trustee’s right of indemnity – Whether it included interest agreed by former trustee to be paid on outstanding debt to third party – Whether vesting order with respect to real property should be made before former trustee’s right of indemnity satisfied – Costs of the proceeding – Whether successful plaintiffs should be deprived of costs of some issues – Trustee Act 1958, ss.45, 51, 58; Transfer of Land Act 1958, s.58.

#### **Environment East Gippsland Inc v VicForests [2010] VSC 53**

Practice and procedure – Amendment of Statement of Claim – Best evidence of matters involved in underlying dispute – Directions to minimise prejudice to defendant – Costs thrown away [More...](#)

#### **SDC (Vic) Pty. Ltd. v Davies and others (21KB) (Civil) [2010] VMC 4**

Contract of Sale of Land; rescission; General Conditions of Table A of the Seventh Schedule of the Transfer of Land Act, 1958; land resold; rights and obligations; interest and legal costs; liquidated damages [More...](#)

#### **Re Timbercorp Securities Limited (in liq) [2010] VSC 50**

Corporations – Application by liquidators for judicial advice and directions – Managed investment schemes – Responsible entity in liquidation – Sale of land on which citrus schemes conducted – Sale to be completed unencumbered by Growers’ rights to use and enjoy the land – Scheme constitution amended to include the power in the responsible entity to terminate the Growers’ licenses with respect to the use of the land – Whether liquidators justified in procuring the extinguishment of Growers’ rights – Net proceeds to be held on trust pending determination of persons entitled to receive the proceeds – S 511 of the Corporations Act 2001 (Cth) [More...](#)

#### **Bernstein v Georgakakis & Anor [2010] VSC 52**

Real property – Caveat – Caveatable interest – Whether serious question to be tried – Balance of convenience – Extent of prohibition claimed in caveat – Transfer of Land Act 1958, ss 89(1), 90(3) [More...](#)

#### **Statewide Services Pty Ltd v Boroondara CC (includes Summary) (Red Dot) [2010] VCAT 180**

Request to substitute amended plans in s 80 application misconceived – consideration of individual instance or systemic issues - Limited discretion in s 80 applications hence substitution of amended plans in accordance with PNPE1 misconceived [More...](#)

#### **Urban Consolidation and Development Pty Ltd & Ors v Commissioner of State Revenue [2010] VSC 49**

Taxes and duties – Pt 10 Taxation Administration Act 1997 (Vic) – Application of relevant law – Executive branch of government – Administration of justice – Indemnity costs [More...](#)

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### Roads Corporation v Love [2010] VSC 32

Land valuation and compensation - Compulsory acquisition of part of land utilised for agricultural and quarry purposes - Highest and best use of land - Claim for loss of landfill potential - Uncertainty of access not affecting prospects of land use approval - Low prospect of land use approvals for landfill use - Uncertainty of access not affecting market value at date of acquisition or thereafter - Market value reflecting future industrial value of land - Hypothetical development calculations rejected - Discounted cash flow analyses rejected - No special value in landfill potential - No severance claim reflecting landfill potential - No disturbance claim reflecting landfill potential - Special value of trees, residence and access tracks - Disturbance claims - Solatium - Environment Protection Act 1970, ss 4, 16, 38, 40, 44, 50E, 50F, 50G, 50H, 50R, 50RE - Extractive Industries Development Act 1995 - Land Acquisition and Compensation Act 1986, ss 30, 40, 41, 43, 44, 90, Part IV - Planning and Environment Act 1987, ss 4, 7, 149, Part 1A - Valuation of Land Act 1960, s 5A [More...](#)

### Apollo 169 Management Pty Ltd v Pinefield Nominees Pty Ltd & Ors; Victorian Securities Corporation Ltd v Apollo Resort Pty Ltd & Ors [2010] VSC 40

Estoppel - Conventional estoppel - Equitable estoppel - Whether mortgagee estopped from denying consent to a lease - Transfer of Land Act 1958 (Vic) ss 77(4)(b), 42(2)(e)  
Trade Practices - Misleading and deceptive conduct - Trade Practices Act 1974 (Cth) s 52  
real property - Mortgage - Judgment for possession [More...](#)

### South East Water Ltd v Transpacific Cleanaway Pty Ltd [2010] VSC 46

Water - Water and sewerage authorities - Statutory compensation for flooding - Escape of sewage - Meaning of "negligent conduct" - Whether principles relating to common law tort of negligence applicable - Appeal on question of law from compensation award made by Victorian Civil and Administrative Tribunal - Appeal dismissed - Water Industry Act 1994 ss 3(3), 4F, 8, 64, 65, 74, 74A, 74B, 80, 90 - Water Act 1989 ss 3, 157 - Wrongs Act 1958 ss 51, 79, 80, 83, 84, 85 - State Owned Enterprises Act 1992 s 69 - Victorian Civil and Administrative Tribunal Act 1998, s 148 [More...](#)

### Rise Home Loans Pty Ltd v Dickinson & Anor [2010] VSC 29

Practice and procedure - appeal from decision of Associate Justice - hearing de novo - application to dismiss proceedings as hopeless under r 23.01 and r 23.03 of the Supreme Court (General Civil Procedure) Rules 2005 - application to strike out the statement of claim as disclosing no cause of action under r 23.02 - application to add a plaintiff - relevant principles to be applied - rr 23.01, 23.02 and 23.03 of the Supreme Court (General Civil Procedure) Rules 2005

Sale of land - contract for the sale of land - representations in answers to requisitions as to good title and possession - neighbour in possession of small slither of land on the rear boundary - neighbour entitled to possess under adverse possession claim - contract in name of purchaser or his nominee - claim by nominee for breach of contract and in tort for deceit and negligent misrepresentation - application to join initial contracting party as plaintiff - application to dismiss proceedings as hopeless dismissed - leave to add plaintiff - 428 Little Bourke St Pty Ltd v Lonsdale St Café Pty Ltd [2009] VSC 133 followed and applied [More...](#)

### Abraham v Johns [2010] VSC 33

Sale of land - Specific performance sought against vendor - Term requiring vendor to register restrictive covenant on adjoining land in favour of sold land - Legal character of term - Whether promissory - Inability to perform as an excuse - Whether vendor discharged from completion - Likely difficulties in performance - Imprecise term possibly requiring Court's supervision or future applications - Appropriateness of specific performance - Decree for less than complete performance of contract [More...](#)

### Orangechapel Pty Ltd v Director of Liquor Licensing (Occupational and Business Regulation) [2010] VCAT 110

Occupational and Business Regulation List - liquor licensing - application for restaurant licence - trading hours - amenity of area - recent planning application in respect of the premises, where permission was given for a restaurant to operate - restaurant premises close to activity zone - Victorian Civil and Administrative Tribunal Act 1998 s 98 - Liquor Control Reform Act 1998 s 9A, s 44(2) [More...](#)

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#### **Hannah & Ors v TW Hedley (Investment) Pty Ltd & Ors [2010] QSC 056**

Real property – strata and related titles and occupancy – sale of unit interests – where buyer entered into contract with seller to purchase off the plan a proposed lot in a unit development – where s 212(1) Body Corporate and Community Management Act 1997 (Qld) required that contract provide for settlement not earlier than 14 days after seller gives advice to buyer that the community titles scheme is established – where buyer may cancel the contract if the contract does not comply with s 212(1) – whether the contract has the effect prescribed by s 212(1) – where one of the condition precedents under the contract for giving notice of the settlement date was described as the registration of the community management statement – where a community management statement is recorded not registered – whether the contract must convey to the buyer the legal requirements for establishment of the community titles scheme [More...](#)

#### **Eames v Brisbane City Council & Anor [2010] QPEC 014**

Whether application properly made – land included volumetric lot for access – no owners consent for that lot – whether owners consent was required – whether development inconsistent with the terms of an easement – nature of “development” applied for [More...](#)

#### **Northeast Business Park Pty Ltd v Moreton Bay Regional Council & Anor [2010] QPEC 015**

Giving notice of the appeal to principal submitters – whether service of the notice of appeal sufficient.

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