



# What's News?

Property, Planning & Environment

2 February 2010

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## Latest news

### National

#### Treasury boss raises the idea of an environment tax

22 January 2010

Australia's Secretary to the Treasury, Ken Henry, has raised the prospect of environmental taxes to protect water resources, soil quality and biodiversity. Dr Henry completed a comprehensive tax review last December but the report is yet to be publicly released by the Federal Government [More...](#)

#### NSW 'worst state' for development approvals

21 January 2010

New South Wales has ranked equal last of all states and territories in the fast, fair and consistent delivery of development assessments, according to new research by the Residential Development Council (RDC) and the Property Council of Australia (PCA). Scoring 6.2 out of 10, Victoria came in joint third and is "on the right track", however, the establishment of a Victorian planning authority to coordinate all areas of planning – tax arrangements, public transport, infrastructure and infill development – is "the missing piece in the planning puzzle" [More...](#)

#### Strata hold-outs forced to sell under new plan

15 January 2010

Individual apartment owners could be forced to sell their units to a developer if three-quarters of the other owners in their building want to do so, under a proposal from the Australian Property Council. It has released a policy paper recommending that strata title laws be changed so that if 75 per cent of owners in a strata title building vote to demolish and rebuild, they can override any opposition [More...](#)

### Victoria

#### Median house prices rise by record \$70,000

23 January 2010

The median house price hit \$540,500 in the three months to December, to be 15 per cent more expensive than the previous record of \$470,000 set in the September quarter, according to the Real Estate Institute of Victoria [More...](#)

#### Government moves to cut green tape

22 January 2010

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. Treasurer John Lenders released the Victorian Competition and Efficiency Commission (VCEC) Report, A Sustainable Future for Victoria: Getting Environmental Regulation Right, as well as the Government's response outlining the measures to reduce the regulatory burden [More...](#)

#### Print Email Share Add to My Stories

20 January 2010

New liquor licensing laws aimed at curbing alcohol-related violence in Victoria are having the unwanted side-effect of forcing small venues to close or change the way they do business [More...](#)

#### Explorers to drill down into Victoria's surface

19 January 2010

Twelve companies will share in \$700,000 Brumby Labor Government funding to assist them explore for new geothermal and mineral resources [More...](#)

#### Melbourne Park to undergo \$363m facelift

19 January 2010

Melbourne will become the first Grand Slam host in the world to boast three undercover courts under a major redevelopment of Rod Laver Arena, with Victorian Premier John Brumby unveiled details of the \$363 million first stage of the redevelopment [More...](#)

#### Successful peninsula link private partner announced

15 January 2010

The Southern Way consortium, comprising the Abigroup, Bilfinger Berger and the Royal Bank of Scotland has been awarded the contract to build and deliver the \$759 million toll-free Peninsula Link project. The project is being delivered toll-free and the community will benefit from faster delivery and greater innovation in its design and construction under the Availability Public Private Partnership (PPP) model [More...](#)

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### Applications for Victoria's large-scale solar funding to close in May

14 January 2010

Applications for up to \$100 million in Brumby Government funding for a new solar power station in Victoria has been extended and will close on 24 May, 2010. Brumby Labor Government has extended the deadline for bids to give applicants the opportunity to secure matching Commonwealth funding, available under the \$1.5 billion Solar Flagship Program [More...](#)

### New South Wales

#### PPP funding model needs an overhaul

21 January 2010

Infrastructure projects are a high-risk game, highlighted by a string of projects that are drowning in red ink - and controversy [More...](#)

#### Harbour foreshore land up for grabs

19 January 2010

Some of the most lucrative commercial property in Sydney will go on the auction block after the NSW Government said it would sell 99-year leases on public assets to raise desperately needed capital for transport, health and education. The properties, owned by the Sydney Harbour Foreshore Authority, include six big hotels, a shopping complex, amusement and tourism sites and car parks [More...](#)

#### \$427 Million Expansion of the University of Technology Sydney

18 January 2010

Premier Kristina Keneally today announced approval has been given to a \$427 million plan to redevelop and expand the UTS Broadway campus. The approval also gives the green light to construction on a \$70 million, 21-storey high student housing building [More...](#)

#### Drafting error puts rezonings in jeopardy

14 January 2010

The New South Wales Government has had to amend the Planning and Assessment Act after revelations that changes introduced in 2008 were flawed. The original amendments contained a drafting error which referred to the wrong section of the Act, and had the effect of invalidating the local environment plans of many councils [More...](#)

### Queensland

#### Housing affordability in Queensland predicted to fall

24 January 2010

A total of 40 per cent of the state's master builders surveyed for a recent report said affordability was of major or critical concern for the industry. The report said their biggest burdens were planning approval processes and infrastructure charges. Property analyst Michael Matusik said research from developers showed infrastructure charges in Queensland were four and five times more expensive than in southern states [More...](#)

### Toowoomba Centre Project tender awarded

20 January 2010

The successful tender for the \$1 million redevelopment of Toowoomba Hospital's new birthing centre has been announced by Deputy Premier and Minister for Health Paul Lucas. The birthing centre's building contract had been awarded to Q-Build - Darling Downs following the closing of the tender in late December [More...](#)

### Social housing roll-out boosts Queensland economy

17 January 2010

a massive roll-out of social housing across the state this year commenced as the Bligh Government works to build more than 3000 social housing dwellings by the end of this year. The roll out is part of a Nation Building Plan which will accommodate more than 6200 eligible Queenslanders. The plan is pumping \$ 1.1 billion from the federal government into the state's economy over three years to June 2012 and creating 13,000 jobs [More...](#)

### Declaration of the ZeroGen project

11 January 2010

ZeroGen Pty Ltd (ZeroGen) is a company incorporated under the Corporations Act 2001 and wholly-owned by the Queensland Government, which proposes to construct and operate a 400 MW (530 MW gross) commercial-scale power generation facility. The plan will integrate a coal gasification power plant with the capture and storage of carbon dioxide (CO<sub>2</sub>) emissions to generate low emission base-load electricity for the National Electricity Market [More...](#)

Media Release - Declaration of the ZeroGen project (11 December 2009)

### High-rise glass safety tests for Queensland

12 January 2010

New high-rise glass window panes will be safer when a national test championed by Queensland takes effect on May 1, with a new test for new high-rise glass window panes will be phased in over a 12-month period to allow industry to adjust. The test, for glass in all windows more than 5m above floor or ground level, will become mandatory in May 2011 [More...](#)

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### Articles

#### National

##### **Green policy watch**

**Source:** Property Australia, Dec/Jan 2010, pp76-77  
Review of current legislation and regulation for green buildings, green policy initiatives

##### **The Copenhagen diagnosis, 2009: updating the world on the latest climate science**

**Author:** Allison, Ian  
**Source:** Sydney: UNSW Climate Change Research Centre, 2009, pp64  
Climate change (Anthropogenic); Climate change; Temperature (Climate); Carbon dioxide;  
Sea levels; Intergovernmental Panel on Climate Change; Statistics; Trends, Long term  
<http://www.copenhagediagnosis.org>

#### Queensland

##### **Registration of a plan is not establishment of a scheme**

**Author:** Sharon Christensen  
**Source:** Australian Property Law Bulletin, December 2009, Vol 24. No 2-3, pp18-20

##### **Ratchet clauses in retail shop leases in Queensland**

**Author:** Sarah Merrett  
**Source:** Australian Property Law Bulletin, December 2009, Vol 24. No 2-3, pp21-23

##### **Please sign here: disclosure statement ineffective with verification**

**Author:** Kris Byrne, Kris  
**Source:** Australian Property Law Bulletin, December 2009, Vol 24. No 2-3, pp24-25

##### **The development approval exception to “residential property” under the Property Agents and Motor Dealers Act 2000 (Qld)**

**Author:** Lumb, Stephen  
**Source:** Australian Property Law Bulletin, December 2009, Vol 24. No 2-3, pp26-28

##### **Court finds solicitor in breach of fiduciary duty owed to client but loss not caused by the breach**

**Author:** Backstrom, Michelle  
**Source:** Australian Property Law Bulletin, December 2009, Vol 24. No 2-3, pp29-32

##### **Attention sellers – don’t jump the gun! – beware of section 22 of the Land sales Act 1984**

**Author:** Sharon Christensen, Sharon, Duncan, Bill  
**Source:** Australian Property Law Bulletin, December 2009, Vol 24. No 2-3, pp33-37

##### **Property Agents and Motor dealings Act warning Statements and counter offers**

**Author:** Duncan, Bill  
**Source:** Australian Property Law Bulletin, December 2009, Vol 24. No 2-3, pp38-39

### Practice notes/directions

#### Victoria

##### **Draft local Fire Management Plan – Cape Liptrap Coastal Park and Waratah Bay – Shallow Inlet Coastal Reserve**

The Department of Sustainability and Environment (DSE), Parks Victoria, CFA and South Gippsland Shire have worked together to develop a draft local Fire Management Plan for Cape Liptrap Coastal Park and Waratah Bay – Shallow Inlet Coastal Reserve. This plan covers the townships of Venus Bay, Walkerville (North and South), Promontory View, Waratah Bay and Sandy Point. The consultation period for public comment ends on 29th of January 2010 [More...](#)

##### **Proposed Accessibility Features for All New Housing & Apartments (Vic)**

11 January 2010  
The Government has released a Regulatory Impact Statement (RIS) outlining details of building requirements for all new houses, villas, townhouses and apartments.

##### **Changes to the regulation of Victoria’s extractive industries**

Since 1 January 2010, Victoria’s extractive industries are now regulated under the Mineral Resources (Sustainable Development) Act 1990 (MRSDA). Information about new section 77T and the changes including planning permit exemptions is available at [www.dpi.vic.gov.au](http://www.dpi.vic.gov.au)

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### Special Gazette 23 December 2009

Amendment VC64 Amends Clause 52.27 - Licensed Premises to remove the requirement for a permit where the change in a liquor licence is solely as a result of the changes to the licence categories to be introduced on 1 January 2010.

### Public consultation on accessibility features in housing

The Victorian Government has released a Regulatory Impact Statement (RIS) that examines approaches to increase the supply of accessible housing in Victoria. A copy of the RIS and information on how to make comment is available online. The deadline for comments is 5.00 pm, 5 March 2010.

### New bushfire provisions for public buildings

Ministerial Direction No. 3 - Bushfire Provisions for Buildings of a Public Nature has been approved and comes into effect on 1 February 2010. It applies to all construction undertaken by Victorian Government departments and agencies.

Modernising Victoria's Planning Act: Draft Bill for comment  
The draft Planning and Environment Amendment (General) Bill 2009 has been released for public comment. It sets out the proposed amendments to the Planning and Environment Act 1987. Comments on the draft Bill must be made in writing by Friday 12 February 2010.

State Planning Policy Framework (SPPF) review

The SPPF has been modernised with new themes and an improved structure. Comments on the draft restructure are invited to be made by 2 February 2010.

### New South Wales

#### Draft Local Development Contributions Guidelines

15 January 2010

The Department of Planning has prepared draft Local Development Contributions Guidelines to replace the existing Practice Notes (issued 2005) and a Policy Statement on Development Contributions. The Guidelines and Policy Statement will assist councils and industry in understanding the implementation of the new Part 5B of the Environmental Planning & Assessment Act 1979.

### Queensland

#### Queensland Magistrates Court: Practice Direction

14 January 2009

The Queensland Magistrates Court has made available Practice Direction No. 1 of 2010: Uniform Civil Procedure Rules 1999 setting out a number of approved entities pursuant to the Uniform Civil Procedure Rules 1999 No. 111 (Qld)

#### Queensland Planning Provisions

The Sustainable Planning Act 2009 (SPA) allows for the Minister to make standard planning scheme provisions (QPP) to provide a clear and consistent framework for planning schemes in Queensland, assist the implementation of state, regional and local policies affecting land use and development and assist in the integration of state, regional, local and community expectations for planning scheme areas. View the Queensland Planning Provisions version 1.0 (1.8 MB).

### Queensland Sustainability declaration

A reference guide containing practical examples, diagrams and pictures along with a fact sheet to assist in the completion of the sustainability declaration is now available.  
Sustainability declaration.

### New Queensland building laws from 1 January 2010

From 1 January 2010, new regulations come into effect that:  
-mandate the completion of a sustainability declaration before a house, townhouse (class 1) or unit (class 2) is marketed for sale-  
mandate existing houses and townhouses (class 1 buildings) located in a reticulated natural gas area to install a greenhouse efficient hot water system (i.e. gas, solar or heat pump) when an existing electric resistance hot water system needs replacing-  
mandate electricity sub-metering in multi-residential (class 2) and office (class 5) buildings prohibit new and some existing covenants and body corporate by-laws from banning certain design and energy efficient features or fixtures of a house, townhouse (class 1a buildings), unit (class 2 buildings) or enclosed garages (class 10a building). [www.dip.qld.gov.au](http://www.dip.qld.gov.au)

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### Cases

#### Victoria

##### **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...](#)

##### **Rozen v Macedon 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...](#)

##### **Segment Woods Pty Ltd v Brockbridge Pty Ltd & Ors [2009] VCC 1531**

Landlord and tenant – Lease – permitted use – office warehouse with factory - direct to public sales – whether premises were retail premises – nature of tenant's use of premises – eBay sales – whether dispute between landlord and tenant within the exclusive jurisdiction of the Victorian Civil and Administrative Tribunal – Lease expiring due to effluxion of time – Order for possession: Retail Leases Act 2003 (Vic) [More...](#)

##### **Sargood (Vic) Pty Ltd v Switzerland Investments Pty Ltd & Anor [2009] VSC 577**

Sale of land – Contract of Sale – time of the essence – purchaser failed to pay substantial instalment of price – vendor's rescission – whether failure excused by reason of vendor's breach – purchaser seeks specific performance – whether purchaser ready and willing to perform its obligations – relief against forfeiture [More...](#)

##### **Glensborough Estate Pty Ltd & Anor v Frajman & Ors [2009] VSC 591**

Property - Removal of caveats from title – Caveatable interest held by lessee terminated on termination of lease – Goldstraw v Goldstraw [2002] VSC 491 - Zampichelli v Zampichelli [2009] VSC 489 - Pyrenees Vineyard Management Limited v Frajman (2008) 69 ACSR 95 - Transfer of Land Act 1958 ss 89, 90 - Supreme Court (General Civil Procedure) Rules 2005 r 6.02 [More...](#)

##### **Marina Cove Pty Ltd (rec's & m'gers app'd) v Pearl Hill Pty Ltd & Ors [2009] VSC 621**

Real property – Removal of caveats - Large residential project – Building contract between developer and builder – Disputes arising – Heads of agreement entered into to settle disputes – Including provision for acquisition by builder of certain proposed lots – Further disputes - Caveat lodged by builder - Heads of agreement thereafter terminated by builder's acceptance of alleged repudiation - Developer later goes into receivership and administration – Further caveats lodged by companies associated with builder based on disputed contracts of sale - Application by developer for removal of caveats – No relevant accrued rights – No relevant estoppel - Caveators unable to establish serious question to be tried as to continuing proprietary rights in the land – Caveats ordered to be removed [More...](#)

##### **Australian Leisure and Hospitality Group Ltd v Trust Company Fiduciary Services Ltd [2009] VSC 574**

Lease – Construction of terms – Development rights – requirement to explain and detail proposed use – Whether the development proposal required a response – Valuation methodology – Whether valuer must be agreed between the parties [More...](#)

##### **Port of Portland Pty Ltd v State of Victoria [2009] VSCA 282**

Land tax – Sale of assets and business of the Port of Portland Authority – Agreement by the State of Victoria with the purchaser to effect amendments to land tax legislation to exclude the value of certain property from assessments and to repay tax paid if the amendments were not made – Amendments did not exclude the property from assessment – Claim for repayment of land tax – Agreement operated as a dispensation from the obligation to pay land tax and as a consequence was invalid – Agreement not authorised by Parliament – No entitlement to damages for failure to amend the statute – Costs – Calderbank letter – Party succeeding on a point raised for the first time at trial – Trial judge's discretion as to costs did not miscarry [More...](#)

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### **Kravchenko v The Rock Building Society [2009] VSCA 292**

Mortgages – Power of sale – Duties – Good faith – Best price consistent with entitlement to security – Private sale to employee of solicitor acting for the mortgagee – Mortgagee failed to fully test the market – Sale price less than best price available for the land – Damages awarded against the mortgagee [More...](#)

La Fontaine v La Fontaine [2009] VSCA 305

Contract – Repudiation – Sale of units in unit trust – Agreed purchase price \$120,000 – Appellant withheld \$5,000 – Whether conduct evinced intention not to perform contract – Repudiation established – Appeal dismissed [More...](#)

### **1144 Nepean Highway Pty Ltd v Abnote Australasia Pty Ltd [2009] VSCA 308**

Contract — Construction of dispute resolution clause — Meaning of 'appoint' — Distinction between 'appoint' and 'nominate' — Appointment of independent expert by independent third party — Binding nature of appointment — Terms of appointment — Objection to expert's terms — Indemnity and release — Implied term that the terms of the expert's engagement be 'reasonable' — Certainty of terms — Injunction to compel engagement of expert. [More...](#)

### Queensland

### **State of Queensland v Springfield Land Corporation (No 2) P/L & Anor [2009] QCA 381**

Real property – compulsory acquisition of land – compensation – assessment – adjoining land – where appellants held parcel of land divided into lots – where respondents compulsorily acquired land held by the appellants for road purposes – where amount of compensation payable under s 20(3) of the Acquisition of Land Act 1967 (Qld) referred to arbitration – where arbitrator found that land taken to effect realignment of transport corridor – where arbitrator found value of appellants' land not enhanced by that taking – where arbitrator found land adjoining land taken limited to appellants' lots or parts of lots immediately adjacent to land taken – where judge held arbitrator erred in law and made findings favourable to respondents – whether arbitrator erred and, if so, whether errors were errors of law amenable to correction on appeal [More...](#)

### **Davidson & Anor v Bucknell & Ors [2009] QCA 383**

Conveyancing – breach of contract for sale and remedies – vendor's remedies – rescission or termination – pursuant to condition giving right to rescind or terminate – where respondents agreed to sell appellants three separate parcels of land by way of three separate contracts – where first contract settled and further two contracts provided for contemporaneous settlement – where appellants did not have financial ability to complete further two contracts – where respondents purported to terminate further two contracts – where appellants refused to accept purported termination on ground that respondents were not in position to perform under contracts – where respondents' chattels remained on one parcel of land and fixed and floating charge attached to other parcel of land – whether respondents entitled to rescind two further contracts [More...](#)

### **Viridian Noosa Pty Ltd v Neumann Contractors Pty Ltd [2009] QSC 398**

Arbitration – the submission and reference – submission as a ground for stay of proceedings – stay of proceedings – where application to stay proceedings under s 53 Commercial Arbitration Act 1990 – whether parties entitled to litigate despite arbitration clause in contract [More...](#)

### **Herriott Services Pty Ltd v Creevey [2009] QSC 419**

Real property – torrens title – indefeasibility of title – exceptions to indefeasibility – fraud or forgery – where applicant seeks rectification of the title to the property in the freehold land register – where applicant seeks to be restored as the registered owner – where respondent relied on a deed of compromise alleged to have been signed by the sole director and shareholder of the applicant to sign transfer of the property on behalf of the applicant – where signatures of the sole director and shareholder of the applicant on the deed of compromise were forged – where the transfer of the property from the applicant to the respondent was registered as a result of the fraud of the respondent [More...](#)

### **Body Corporate for One The Esplanade Community titles Scheme 14060 v Chief Executive of the Department of Environment and Resource Management [2009] QSC 423**

Administrative law – judicial review – irrelevant considerations – error of law – Where applicant retained a management company to manage its affairs – Where management company was acquired by another management company – Where new management company did not notify the Chief Executive of Land Valuations of its change of address – Where redirection service established to direct mail from old to new management company – Where a valuation notice sent to the old management company – Where applicant claims the valuation notice was not received – Where applicant lodged objection to notice after expiry of objection period – Where respondent rejected the objection for being out of time but agreed to consider the matter under s 28 – Where respondent found no alteration to the valuation was warranted – Where applicant lodged an appeal – Where respondent agreed to consider matter pursuant to s 44(2) – Where respondent not satisfied that the failure to lodge a timely objection was through no fault of the applicant – Where applicant brings application for judicial review – Whether the respondent made a mistake of law - Whether the respondent took into account irrelevant considerations [More...](#)

### **May & Anor v Redland Shire Council (No 2) [2009] QPEC 137**

Directions for further consideration where parties propounded alternative plans as the basis for a possible future reconfiguration consequent upon the court's intimating that a material change of use should be approved [More...](#)

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### Legislation

#### National

**National Greenhouse and Energy Reporting (Audit) Determination 2009**

This Determination provides for the requirements to be met by registered greenhouse and energy auditors in preparing for and carrying out greenhouse and energy audits (06/01/2010) [More...](#)

**Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004**

Legislative Instrument Compilation (current) - F2010C00038 (04/01/2010) [More...](#)

**Petroleum (Submerged Lands) (Pipelines) Regulations 2001**

Legislative Instrument Compilation (current) - F2010C00019 Number: SR 2001 No. 314 (05/01/2010) [More...](#)

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