



# What's News?

Property, Planning & Environment

23 June 2010

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## Latest news

### National

#### **Adelaide tops cities survey, Sydney last**

14 June 2010

Property groups have commissioned a KPMG audit which ranks capitals on effective city planning, including managing population growth, traffic congestion, and housing affordability. Sydney was panned for being unaffordable with too much traffic; planning policies were not great and were not implemented properly.

The auditors found that good planning policies were in place in Melbourne, but authorities failed to deliver on the ground [More...](#)

#### **\$2.5 million to improve water quality in the Swan and Canning Rivers**

9 June 2010

Water quality in the Swan and Canning rivers will be improved thanks to a grant from the Australian Government. Environment Protection Minister, Peter Garrett, and Minister for Agriculture, Fisheries and Forestry Tony Burke today announced that the Swan River Trust would receive \$2.5 million [More...](#)

#### **Minister for Climate Change, Energy Efficiency and Water**

2 June 2010

New water planning and management charge rules will provide better information to water users throughout the Murray Darling Basin. Under the Water Act 2007, the Minister is required to obtain and have regard to advice from the ACCC on water charge rules, which include the water planning and management charge rules [More...](#)

#### **Revolt over parking sting**

2 June 2010

Tens of thousands of drivers stung with hefty shopping centre car park fees are being urged to push for a mass claim for compensation. The ACCC will be approached to consider a class action against companies slugging motorists up to \$88 for failing to display tickets on dashboards or overstaying at supermarkets, local shopping centres and major stores [More...](#)

### Victoria

#### **Industry interest sought on greater capacity at Port**

12 June 2010

The Brumby Labor Government is calling for expressions of interest from industry on new ways to expand container capacity at the Port of Melbourne, Roads and Ports Minister Tim Pallas has announced. The Port has tested interest with stevedores, shipping lines and port stakeholders and prepared a business case for the redevelopment of Webb Dock for the Government's consideration [More...](#)

#### **Victorian irrigators plan fight for compensation over water cuts**

9 June 2010

Irrigators in Victoria's north-west say that there's no point fighting potential cuts to their entitlements. The Murray Darling Basin Authority is set to release a new basin plan in the next few months, which will detail how much water irrigators can use.

#### **\$26m revamp for Southgate**

11 June 2010

The Southgate retail and restaurant centre, the catalyst for the rebirth of Melbourne's Yarra River district, is to be substantially refurbished. The Southgate refurbishment is set to start in September, pending planning approvals, and should be completed by late next year [More...](#)

#### **\$25 million boost to transform skilled stadium**

10 June 2010

The Victorian Government will invest \$25 million into the third stage of a major redevelopment of Geelong's Skilled Stadium. Mr Brumby said the Victorian Government would contribute \$25 million towards the \$75 million project, further building on the recent \$6 million contribution for the Premiership Stand [More...](#)

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### **New environmental significance overlays for Geelong**

9 June 2010

The environmental significance of the Victorian Volcanic Plains grasslands near Werribee will soon be recognised under a new planning scheme amendment. Planning Minister Justin Madden said an Environmental Significance Overlay would be introduced into the Greater Geelong Planning Scheme as part of the plan to extend Melbourne's Urban Growth Boundary [More...](#)

### **Redefining Melbourne for sustainable growth**

9 June 2010

Homebuyers are set to be the big winners with an additional 24,500 hectares of land to become available for housing after plans to extend Melbourne's Urban Growth Boundary were introduced into Parliament. The city's new boundary and set out the alignments for major transport initiatives such the Outer Metropolitan / E6 Transport corridor project and the Regional Rail Link [More...](#)

### **Give our streets the green light: MAV**

8 June 2010

The Municipal Association of Victoria has called on State and Federal Governments to help local councils replace old street lighting with new energy-efficient technology. The Give Our Streets the Green Light campaign is led by the MAV and Maribyrnong City Council, in partnership with 40 other Victorian councils [More...](#)

### **Lake Wendouree to be filled**

7 June 2010

Ballarat's iconic Lake Wendouree will be filled with water by late next year, the Premier John Brumby has announced. Under the new project, the Victorian Government will fund the piping of an additional 1700 million litres of water, more than double the combined amount of water currently available for the lake from other sources [More...](#)

### **More support for bushfire-affected kindergartens**

7 June 2010

The Brumby Labor Government has provided special grants to three kindergartens which had buildings destroyed in the devastating Black Saturday bushfires [More...](#)

### **Draft energy price cuts good news for Victorians**

4 June 2010

Energy and Resources Minister Peter Batchelor has welcomed a draft decision by the independent Australian Energy Regulator (AER) which would see Victorian electricity distribution prices drop next year. The decision would see distribution charges for the five businesses next year decrease in real terms by between 1.5 per cent and 19.6 per cent [More...](#)

### **Brumby announces double win for Avalon Airport**

3 June 2010

Premier John Brumby has announced as part of a new agreement between the Victorian Government, Aerospace Australia and Avalon Airport, the airport would continue to host the air show through until 2015 with next year's air show confirmed for the 1 - 6 March, 2011 [More...](#)

### **Box hill development rejected**

1 June 2010

Minister for Planning Justin Madden has announced that a 39-storey tower proposed for Box Hill will not go ahead, following refusal of the permit application by Governor in Council. As submitted, the proposal was a stand-alone development and not in keeping with the Whitehorse Planning Scheme or the State's strategic vision [More...](#)

### **Dozens fleeced in water filter scam**

31 May 2010

A Contaminated water scam is being used to fleece thousands of dollars from Victorian householders. Doorknockers doing bogus drinking water quality tests are offering free filters through a fake government rebate, then charging up to \$3000 for maintenance over 10 years [More...](#)

### **New South Wales**

#### **Review for major Inner-Sydney development committee**

10 June 2010

The role, function and operations of the Central Sydney Planning Committee (CSPC), the body responsible for decision-making on large development proposals in the City of Sydney local government area, will be reviewed. Minister for Planning, Tony Kelly, said the CSPC has been in operation for 22 years Review for Major Inner-Sydney Development Committee.

#### **Housing plan fails to build on soaring revenues**

9 June 2010

NSW has introduced stamp duty concessions for downsizing seniors and off-the-plan purchasers. But the proposal barely passes as a means of using housing stock more efficiently at a time when retirees increasingly deprive younger families of more suitable established houses [More...](#)

#### **Anger in NSW regions but housing wins praise**

9 June 2010

Industry groups and unions have welcomed the state government's two "zero stamp duty" initiatives for new homes. Property Council of Australia acting NSW director Glenn Byres said the initiative would create an additional 4000 homes each year and dismissed concerns that developers would take advantage of the scheme by raising home prices equal to the savings in stamp duty [More...](#)

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### NSW Farmers supports Spencer court case

10 June 2010

The NSW Farmers' Association says in a test case for all Australian farmers, the Association will support Peter Spencer in taking his case further in the High Court. NSW Farmers' Association President Charles Armstrong says the Commonwealth Constitution contains protections against unfettered Federal Government power to appropriate private property, and states that just terms compensation must be paid for any acquisition of property.

### \$17 million for water security

8 June 2010

Four councils in New South Wales will receive new infrastructure to deliver improved water security, Federal Minister for Water, Senator Penny Wong, has announced. Four councils and two water corporations will implement water saving projects worth \$17 million [More...](#)

### Gas Pipeline Duplication Boosts Energy Reliability

8 June 2010

The NSW Government has approved the duplication of a key section of gas pipeline between Young and Wagga Wagga. Minister for Planning, Tony Kelly, said the \$38 million duplication will help secure the State's energy supplies as demand increases Gas Pipeline Duplication Boosts Energy Reliability.

### More Help for Homeowners and Renovators

8 June 2010

A \$6.5 million investment that expands the use of complying development codes, will allow homeowners to get 10-day planning approvals if they meet set planning standards. Additional funding will also support the continued operation of the Planning Assessment Commission (PAC) and Joint Regional Planning Panels (JRPPs), which to date have delivered efficient and transparent decisions on major projects More Help for Homeowners and Renovators.

### New local environmental plan to rejuvenate Canterbury

7 June 2010

Minister for Planning, Tony Kelly, said the approval of the amendment to the Canterbury local environmental plan (LEP) will help revitalise the existing rundown town centre and also help create a new nearby riverfront precinct. The amendments also contribute towards the employment and dwelling targets for the Canterbury local government area to 2031, as outlined in the NSW Government's Metropolitan Strategy. New Local Environmental Plan to Rejuvenate Canterbury.

### Mayor says levy cap will force rates up

4 June 2010

Development costs for new homes have been capped at \$20,000 in an effort to improve housing affordability. But Mayor Peter Dimbrowsky says putting a limit on the development levy will force councils to push up rates [More...](#)

### Independent regulator to set council rates

5 June 2010

The New South Wales Government has announced that it will retain rate pegging, with charges to be set by the independent pricing regulator. Rates will be set by the Independent Pricing and Regulatory Tribunal (IPART), with a cap of \$20,000 a lot for council charges on new development (Section 94 contributions) [More...](#)

### Significant reform to local council infrastructure charges

4 June 2010

The NSW Government today announced major sweeping changes to local council charges on new housing development. The \$44 million Comprehensive Housing Supply Strategy changes will lower the cost of new housing construction, and provide certainty, transparency and fairness to councils, landowners, developers and the community. Significant Reform to Local Council Infrastructure Charges.

### Minister introduces historic tenancy law reform Bill

2 June 2010

Minister for Fair Trading Virginia Judge today moved to secure a balanced and certain future for residential property investors and tenants in New South Wales with the introduction of the Residential Tenancies Bill 2010. Ms Judge said the Bill was the biggest reform to the State's residential tenancy law since the Residential Tenancies Act 1987.

### Queensland

#### Brisbane planning 'second best'

14 June 2010

Brisbane is the second-best-planned capital city in Australia, according to a new report released by industry lobby groups. The document, Spotlight on Australia's Capital Cities, applauds the Queensland government on its existing South-East Queensland regional plan and the related infrastructure plan. But it calls for better planning of development in existing built-up areas and slams inconsistencies between some growth plans and environmental policies [More...](#)

#### Research to clear up laws

11 June 2010

A research project by a UQ law academic aims to help landholders understand the laws affecting the sustainable management of their land. TC Beirne School of Law lecturer Dr Justine Bell is investigating how information from a large number of Australian environmental acts can be drawn together into a single system.

#### Milton Transit Oriented Development approved by Minister

11 June 2010

Minister for Infrastructure and Planning Stirling Hinchliffe has approved a mixed use development integrated with Milton train station. The conditional approval follows Mr Hinchliffe's April 16 decision to call-in the development adjacent to the station [More...](#)

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### Coastal zoning could be beating system

11 June 2010

A developer has used a block of land's rural zoning to clear vegetation that was a stumbling block with the intent to build a retirement village on the site. Under the zoning, council's environment branch had been required to sign off on that occurring and, despite the land being almost completely cleared, was satisfied that the allowable footprint had not been exceeded (11 June 2010) [More...](#)

### New City of Brisbane Act is in place for Brisbane

9 June 2010

A new City of Brisbane Act will be in place by July 1. This new Act will come into force at the same time as the Local Government Act 2009, giving all councils across Queensland a new modus operandi, giving Brisbane City Council the legislative framework it needs for 21st century local government [More...](#)

### Joint planning means better city living for Brisbane

4 June 2010

The joint State Government and Brisbane City Council River City Blueprint will address the city's challenges with better long-term coordinated planning. Last year Premier Anna Bligh and Lord Mayor Campbell Newman launched the River City Blueprint project as a partnership to develop a new approach to planning. Since then, more than 1,600 stakeholders and residents have offered feedback during three months of consultation.

### Changes for the Department of Infrastructure and Planning

4 June 2010

The Department of Infrastructure and Planning's ability to keep the state sustainable has been enhanced by an influential new cross-government growth management body, the Growth Management Queensland (GMQ) The establishment of GMQ would bring new tasks for the department, including better links between land use planning, infrastructure delivery, economic development and environmental asset issues [More...](#)

## Articles

### National

#### Hot air generators

Source: Business Review Weekly, June 10-16 2010, pp55  
Development of wind farms in Australia, covering recent cases and legislation

#### The changing face of Government rebates

With many Australians taking advantage of the offers, these rebates are now changing, with effects for both homeowners and industry  
Source: Connection, January 2010: pp1

## Practice notes/directions

### Victoria

#### Call for policy submissions on fire services levy

9 June 2010

Victorians have just over a month to submit detailed policy ideas on how best to fund Victoria's fire services as part of the Brumby Labor Government's review. The Government's review will be released within six months of the Government receiving the Victorian Bushfires Royal Commission's final report. The Green Paper can be accessed at [www.dtf.vic.gov.au](http://www.dtf.vic.gov.au). Interested parties can submit details of alternative funding models by email: [fireservicesproject@dtf.vic.gov.au](mailto:fireservicesproject@dtf.vic.gov.au) [More...](#)

#### Warning – don't fall for bogus water filter rebate scam

31 May 2010

Consumer Affairs Minister Tony Robinson has warned Victorian households to watch out for dodgy doorknockers promoting a bogus government water filter rebate scam. Consumer Affairs Victoria (CAV) was investigating complaints about doorknockers claiming to represent a "Government Water Filter Rebate" scheme and offering to run tests on householders' tap water to see if it is polluted.

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### Exhibited Plans

Buloke C14 (re-exhibition): Proposes to introduce 10 new heritage precincts in Donald, Birchip, Charlton and Wycheproof.

Greater Bendigo C139: Proposes to implement the findings of the City of Greater Bendigo Heritage Study Stage 2 Former Shires of Mclvor and Strathfieldsaye (2009).

Maribyrnong C82: Proposes to replace the existing Municipal Strategic Statement at Clause 21 with a new Municipal Strategic Statement and replace the existing Local Planning Policies at Clause 22 with new and revised Local Planning Policies.

Maroondah C77: Proposes to rezone land at 40A Heathmont Road, Heathmont to a Residential 1 Zone to enable the subdivision of the land into 66 lots.

Mildura C47: Proposes to reduce the area of land affected by HO125 and HO177, deletes HO122, and introduces tree controls for HO125.

Mornington Peninsula C126: Proposes to include a range of items to reduce red-tape and update the Planning Scheme to achieve underlying intents.

Wodonga C75: Proposes to implement the Wodonga Retained Environmental Network Strategy (2006).

Glen Eira C74: Proposes to rezone 365A Hawthorn Road, Caulfield South to a Business 1 Zone and include the land in the Environmental Audit Overlay.

Glen Eira C76: Proposes to rezone 235 and 237 Murrumbeena Road, Murrumbeena to a Business 1 Zone to facilitate and enhance vehicle and bicycle accessibility.

Greater Bendigo C115: Proposes to facilitate and support the continued expansion and development of Girton Grammar School.

Greater Geelong C215: Proposes to rezone 1364-1368 Murradoc Road, St Leonards to a Business 1 Zone.

Stonnington C125: Proposes to apply a permanent Heritage Overlay to the Argo Hotel building at part 62-74 Argo Street, South Yarra.

Yarra C112: Proposes to rezone the Kangan Batman TAFE site at 70 Gwynne Street, Cremorne to a Business 2 Zone and incorporate an Environmental Audit Overlay on the site.

### Lapsed Plans

Greater Geelong C173

### Panel Reports

Greater Geelong C206: Armstrong Creek East Precinct.

Greater Geelong C207: Armstrong Creek North East Industrial Precinct.

Alpine C15: Reference the recommendations of the Alpine Shire Residential Land Review, 2005 and include a number of reports as reference documents.

Melton C82: Incorporate the Taylors Hill West Precinct Structure Plan.

### Announcements

The Growth Areas Infrastructure Contribution (GAIC) was passed on 25 May.

### Melbourne's Urban Growth Boundary introduced into Parliament

The Minister for Planning has approved and is now seeking parliamentary ratification of Amendment VC67.

Amendment VC70: Changes the Victoria Planning Provisions and planning schemes by amending Clause 52.38 – 2009 Bushfire Recovery to extend the planning scheme exemptions until 31 March 2011, extend the time by which uses must be bought into compliance with the planning scheme until 31 March 2012, and further clarify the exemptions that were introduced by the clause.

### Central City Standing Advisory Committee appointed

The Minister for Planning has appointed a new joint Advisory Committee to provide guidance on various projects over 25,000 square metres in the area covered by the Melbourne Planning Scheme

### Currently Inviting Submissions

Ports and Environs Advisory Committee Discussion Paper - Comments by Friday, 25 June 2010.

### New South Wales

### Planning circular: Local Development Contributions

The purpose of this circular is to advise councils and the public of changes relating to local development contributions as a result of a revised mechanism for setting these contributions and council rates (04 June 2010) PS 10-014 - Local Development Contributions

### Review of Central Sydney Planning Committee

10 June 2010

The Minister for Planning, Tony Kelly has announced the establishment of an independent review into the role and performance of the Central Sydney Planning Committee (CSPC) in the context of recent reforms to the planning and development approval system in NSW.

Location: City of Sydney # Start date: Thursday 10 June 2010 # End date: Wednesday 7 July 2010.

### Queensland

### New City of Brisbane Act 2010

9 June 2010

The Act, along with the Local Government Act 2009, will come into force from July 1.

As well as replacing the City of Brisbane Act 1924, the City of Brisbane Act 2010 replaces the City of Brisbane Regulation 2004, Brisbane City Council Business and Procedures Act 1939, the Local Government (China Town and Valley Malls) Act 1984 and the Local Government (Queen Street Mall) Act 1981 [More...](#)

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### Brisbane River City Blueprint 2010

4 June 2010

The River City Blueprint project explores options for shifting the development trend from being river-oriented to transit-oriented, and for providing development capacity to meet employment targets and facilitate growth. The report from the forum will be available at the end of June and the draft River City Blueprint will be released for public comment in September 2010. Details are available here: [www.brisbane.qld.gov.au/rivercityblueprint](http://www.brisbane.qld.gov.au/rivercityblueprint)

### Public inquiry on the need for a state population policy

The Draft report provides a further opportunity for public comment on the need for a State Population Policy, and the initiatives that could be of value in ensuring growth is managed in a sustainable manner Related Link: [LGAQ Population Inquiry Report](#)

## Legislation

### Commonwealth

#### **Air Navigation (Aircraft Noise) Amendment Regulations 2010 (No. 2) SLI 2010 No. 118**

These Regulations amend the Air Navigation (Aircraft Noise) Regulations 1984 to restrict or prohibit the operation of large, marginally noise compliant aircraft (07/06/2010) [More...](#)

#### **Civil Aviation Safety Amendment Regulations 2010 (No. 1) SLI 2010 No. 120**

These Regulations amend the Civil Aviation Safety Regulations 1998 to make minor and machinery changes to certain provisions relating to drug and alcohol management plans and testing (Part 99). (07/06/2010) [More...](#)

#### **Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Regulations 2010 (No. 1) SLI 2010 No. 121**

These Regulations amend the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004 to enable the National Offshore Petroleum Safety Authority to provide regulatory services relating to greenhouse gas activities and access safety cases for proposed facilities that use new technologies (07/06/2010) [More...](#)

#### **Offshore Petroleum (Safety) Amendment Regulations 2010 (No. 1) SLI 2010 No. 122**

These Regulations amend the Offshore Petroleum (Safety) Regulations 2009 to incorporate coverage for all greenhouse gas storage activities (07/06/2010) [More...](#)

### Victoria

#### **Acts Assented to**

Environment Protection Amendment (Landfill Levies) Act No 20 of 2010

Assent: 1/06/2010 SG (No. 200) 1/6/2010 p. 1 Commencement: 01/07/2010: s. 2

Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act No 23 of 2010

Assent: 1/06/2010 SG (No. 200) 1/6/2010 p. 1 Commencement: NYP

#### **Radiation Amendment Act No 24 of 2010**

Assent: 1/06/2010 SG (No. 200) 1/6/2010 p. 1 Commencement: NYP Not yet in operation: Ss 1-10

#### **Therapeutic Goods (Victoria) Act No 25 of 2010**

Assent: 1/06/2010 SG (No. 200) 1/6/2010 p. 1 Commencement: NYP

#### **Statutory Rules**

Transfer of Land (Fees) Amendment Regulations No 34 of 2010

Date of Making: 1/06/2010 Commencement: 01/07/2010: reg. 3

Not yet in operation: Regs 1-4: on 01/07/2010: reg. 3 Sunset Date: 01/06/2020

#### **Road Safety (Drivers) and Road Safety (Vehicles) Amendment (Fees) Regulations No 35 of 2010**

Date of Making: 1/06/2010 Commencement: 01/07/2010: reg. 3

#### **Chattel Securities (Registration) Amendment (Fees) Regulations No 36 of 2010**

Date of Making: 1/06/2010 Commencement: 01/07/2010: reg. 3 [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

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### Cases

#### Victoria

##### **Vidler v Commissioner of Taxation [2010] FCAFC 59**

Taxation – goods and services tax – “residential premises” – whether vacant land without living facilities can be residential premises – whether residential zoning and access to services sufficient [More...](#)

##### **Edwards v Santos Limited [2010] FCAFC 64**

High court and federal court – application for leave to appeal – leave sought to appeal from interlocutory judgment summarily dismissing the proceeding – whether appeal had reasonable prospects of success – whether appeal would seek an advisory opinion as to a hypothetical situation - Native title – whether primary judge’s conclusion that Lardil applied is attended by sufficient doubt as to warrant its reconsideration - Native title – indigenous land use agreements – declaratory and injunctive relief sought in relation to assertion made during ILUA negotiations [More...](#)

##### **Aviell Pty Ltd & Ors v Shelford Church of England Girls Grammar School [2010] VSC 230**

Interlocutory injunction – Restrictive covenant – Serious question to be tried – Damages not an adequate remedy – Balance of convenience – Interlocutory injunction granted. Urgent injunction restraining the defendant, Shelford Church of England Girls Grammar School, from carrying out any construction works (other than the minimum amount of work necessary to make the site safe in the interim) [More...](#)

##### **Solak v Registrar of Titles & Ors (No 3) [2010] VSC 235**

Practice & procedure – Costs – Whether unsuccessful plaintiff to pay defendants and third party costs – Whether party/party costs or indemnity costs to be awarded – Meaning of “full costs” – s 110(5) Transfer of Land Act 1958 (Vic) - Practice & procedure – Whether third party claim should be dismissed as no order made on the disposition of that proceeding [More...](#)

##### **Piroshenko v Grojsman & Ors [2010] VSC 240**

Real property – Caveat – Application to remove caveat - Transfer of Land Act 1958 s 90(3) – Nature of discretion – Analogous to application for interlocutory injunctive relief – Meaning of a serious question to be tried – Need to establish prima facie case of sufficient probability to justify maintenance of caveat - Australian Broadcasting Authority v O’Neill (2006) followed.  
<http://www.austlii.edu.au/au/cases/vic/VSC/2010/240.html>

##### **Roy & Anor v Laguna [2010] VSC 250**

Real property – Residential property – Adverse possession – Successive occupiers – Continuity – Gaps in occupation – Damages/Mesne profits – Improvements undertaken by last possessor claiming adverse possession – Whether unjust enrichment – Restitution. [More...](#)

##### **Sadri v Samian (No 3) [2010] VSC 251**

Administration and probate – Whether estate solvent – Executor ordered to adduce further evidence on two properties – Valuation evidence – Expert evidence as to Iranian law – Sufficiency of evidence – Net position of estate – Executor failed to ascertain estate’s liability to deceased’s children by reason of deceased’s breach of a trust for their benefit – Executor paid other unsecured creditors in full disregarding estate’s liability to children – Executor failed to get in proceeds of Iranian land – Executor alleged land subject to equitable charge to secure deceased’s debt to her father – Whether transaction created equitable charge – Whether executor acted properly in permitting father to sell land and keep proceeds of sale – Extent of executor’s personal liability. Evidence – Best evidence rule – Defendant sought to rely on copy documents relating to Iranian land – Authenticity disputed – No explanation for failure to produce originals – Documents inadmissible [More...](#)

##### **Howard v ACE Radio Broadcasters Pty Ltd & Anor [2010] VSC 248**

Planning – Leave sought to appeal on questions of law – Permission granted to vary permit conditions of telecommunications facility – Whether underground radials formed ‘part of the structure’ – Building and works permit not required under farming zone controls - Telecommunications facility exception in Planning Scheme – Meaning of ‘minimal impact’ in terms of amenity effects – Relevance of alternative locations – Relevance of cost considerations to community infrastructure – Imposition of conditions to avoid material impact upon amenity of area - Victorian Civil and Administrative Tribunal Act 1988, s 148 - Planning and Environment Act 1987, ss 3, 4 – Moyne Planning Scheme, cl 52.19, 62.02 [More...](#)

##### **Roads Corporation v Love [2010] VSC 238**

Practice and procedure - Trial of compulsory land acquisition case – Separate trial of stated questions ordered following openings – Rule 47.04 Supreme Court (General Civil Procedure) Rules 2005 - Representation made by applicant in Court on an interlocutory application, and in Court of Appeal on appeal from interlocutory order, and subsequently in writing as to an issue conceded by it for the purposes of the trial – Whether relevant detriment suffered by respondent – Whether applicant estopped from departing from the representation – Whether admission made by applicant – Whether notice of admission given pursuant to Rule 35.02 Supreme Court (General Civil Procedure) Rules 2005 - Whether applicant may withdraw admission without leave of the Court under Rule 35.02(2) or at common law – Factors in the exercise of the discretion on applicant’s application to withdraw admission [More...](#)

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### **Priceline Pty Ltd v JHY Nominees Pty Ltd & Ors [2010] VSCA 129**

Practice and procedure - Whether leave to appeal should be granted from interlocutory decision dismissing application for inspection of documents - Dispute relating to waiver of client legal privilege - Decision attended with sufficient doubt - Nature of requirement that applicant demonstrate substantial injustice if decision not reversed - Leave to appeal refused - Leases [More...](#)

### **Srelor PTY LTD v Rand Corporation Pty Ltd (Retail Tenancies) [2010] VCAT 637**

Retail tenancy - obligation of positive disclosure of requirement for disabled access - misleading and deceptive conduct - s158 of the Fair Trading Act 1999 - lease set aside [More...](#)

### Queensland

### **Barnes on behalf of the Wangan and Jagalingou People v State of Queensland [2010] FCA 533**

Native title - notice of motion to replace Applicant in application for determination of native title - s 66B Native Title Act 1993 (Cth) - authorisation meeting voted to replace Applicant - whether members of claim group were intimidated and bullied at authorisation meeting - whether attendees at authorisation meeting were members of claim group and thereby authorised to vote on resolutions - whether non-completion of anthropological and genealogical reports invalidated resolutions to replace Applicant Held: order made to replace Applicant [More...](#)

### **Doolan v Rothmont Projects Pty Ltd [2010] QSC 193**

Conveyancing - statutory obligations or restrictions relating to contract for sale - protection of purchasers - obligations on vendor: disclosure, warnings and like matters - where a purchaser signed a contract to purchase a property - where the purchaser signed a warning statement before the offer was signed - where the vendor amended the special conditions - whether the amendment amounted to a counter-offer - whether the purchaser had to sign a new warning statement before signing the amended contract - Conveyancing - completion of contract - time for completion - generally - where settlement did not occur at the time stipulated in the contract - whether the purchaser could terminate the contract after that time.

### **Vennard v Delorain P/L [2010] QSC 190**

Conveyancing - statutory obligations or restrictions relating to contract for sale - protection of purchasers - obligations on vendor: disclosure, warnings and like matters - where the applicant entered into a contract to purchase property - whether the applicant's attention had been directed to a warning statement in accordance with s 365(2A)(c) of the Property Agents and Motor Dealers Act 2000 - whether the applicant was entitled to terminate the contract - Conveyancing - statutory obligations or restrictions relating to contract for sale - protection of purchasers - obligations on vendor: disclosure, warnings and like matters - where the disclosure statement provided to the applicant by the respondent did not contain services location diagrams or an exclusive use plan - whether the disclosure statement was substantially complete as required pursuant to s 213 of the Body Corporate and Community Management Act 1997 ("BCCMA") - whether the applicant is entitled to avoid, not complete or cancel the contract - Conveyancing - the contract and conditions of sale - description of property and subject matter of sale - generally - where the contract property for sale was described as "Proposed Lot 51 on proposed SP 207070, as highlighted on the Identification Plan contained in the Disclosure Documents" - where there was no proposed "SP 207070" in existence - where a "proposed building plan" was attached to the contract which included documents "intended only to represent an indicative development plan" - whether the contract clearly identified the lot to be purchased - whether the contract is void for uncertainty - Conveyancing - statutory obligations or restrictions relating to contract for sale - protection of purchasers - obligations on vendor: disclosure, warnings and like matters - whether the disclosure statement clearly identified the lot to be purchased as required pursuant to s 21(1)(a) of the Land Sales Act 1984 - whether the applicant is entitled to avoid, not complete or cancel the contract - Conveyancing - statutory obligations or restrictions relating to contract for sale - protection of purchasers - other matters - where s 212 of the BCCMA at the relevant time provided that a contract for the sale of a lot intended to come into existence as a lot in a community titles scheme must provide that settlement must not take place earlier than 14 days after the seller advises the buyer that the scheme has been established - where the contract contained a similar, but not identical provision - whether the contract complied with s 212 - whether the applicant is entitled to cancel the avoid, not complete or cancel the contract <http://www.sclqld.org.au/qjudgment/2010/QSC/190>

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### **Affram Pty Ltd v Brisbane City Council [2010] QPEC 047**

Planning and environment – demolition code – demolition control precinct – whether demolition will result in the loss of traditional “timber and tin” building character - Planning and environment – demolition code – demolition control precinct- whether building does not contribute positively to the visual character of the street - planning and environment – demolition code – demolition control precinct – whether building built prior to 1900 – where evidence that building may have been built prior to or after 1900 – whether onus of proof of building date on appellant or respondent  
<http://www.sclqld.org.au/qjudgment/2010/QPEC/047>

### **Wilhelm v Ipswich City Council & Anor [2010] QPEC 046**

Appeal against approval of application for a development permit for a material change of use for a business use (service station and shopping centre) – alleged conflict with planning scheme – traffic engineering matters – need – adverse impacts on residential amenity specifically noise – generation of non-local traffic on local streets – visual amenity [More...](#)

### **Lewani Springs Resort P/L v Gold Coast City Council & Anor [2010] QCA**

Environment and planning – courts and tribunals with environment jurisdiction – queensland – supreme court – error of law – where second respondent lodged a development application – where 30 business days of public notification were required because of the presence of wetlands near the proposed development – where only 15 days’ notice were given – where primary judge excused the deficiency under s 4.1.5A of the Integrated Planning Act 1997 (Qld) – whether the primary judge’s decision to excuse the non-compliance was an error of fact or law [More...](#)

### **Riggall & Anor v Thompson [2010] QCA 144**

Contracts – general contractual principles – construction and interpretation of contracts – penalties and liquidated damages – general principles – where the appellant entered into a contract to buy a residential lot from the respondents – where the appellant was unable to pay the purchase price on the settlement date and extended settlement dates – where the respondents terminated the contract and resold the lot – where the trial judge assessed damages at \$72,201.28, subsequently amended to \$72,817.16, which included the loss on resale, the holding costs incurred after the appellant’s default, legal fees, real estate agent’s fees and costs, and interest – where the trial judge concluded that clause 9.3 entitled the respondents to adopt all of the options in clause 9 subject to the provisions of clauses 9.4 and 9.5 and at all times subject to the overarching principle of reasonableness in the assessment of damages – whether the primary judge erred in assessing damages under clause 9 - Contracts – general contractual principles – construction and interpretation of contracts – penalties and liquidated damages – other particular cases – where the appellant challenged the primary judge’s allowance under clause 9.4(1)(b) for real estate agent’s fees and costs and legal fees relating to the contract – whether clause 9.4(1)(b) was penal in allowing the respondents to recover expenses of the contract and expenses of the resale – whether the amount recoverable under clause 9.4(1)(b) was out of all proportion with the loss which the parties might have anticipated at the time of the contract as flowing from the breach and termination of the contract – whether clause 9.4(1)(b) was an unenforceable penalty - Contracts – general contractual principles – construction and interpretation of contracts – penalties and liquidated damages – general principles – where the appellant challenged the primary judge’s allowance of holding costs under clause 9.5 – whether the primary judge erred in allowing the respondents to recover holding costs incurred after the appellant’s default [More...](#)

### **Banks v Wells [2010] QCAT 238**

Retail lease dispute option to renew lease – condition precedent that Tenant not be in breach of lease – tenant in breach – forfeiture of right to exercise option [More...](#)

## Whats News? - Property, Planning & Environment

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