



# What's News?

Property, Planning & Environment

30 March 2010

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## Latest News

### National

#### **New disclosure rules and certificate for office blocks**

18 March 2010

Office block owners will have to disclose the building's energy efficiency to prospective buyers or lessees under a government bill introduced into federal parliament. Mr Combet said a full building energy efficiency certificate would have to be given to interested parties and would include a star rating of the building's energy efficiency and additional information on how efficiency could be improved. [More...](#)

#### **Household electricity prices to soar nationally**

19 March 2010

Household electricity bills are set to soar, with the Independent Pricing and Regulatory Tribunal (IPART) said yesterday it has approved price rises of up to 64 per cent in total over the three years from 2010-11 until the end of 2012-13. [More...](#)

#### **Company admits misleading consumers about marketing carbon credits**

11 March 2010

The Federal Court of Australia has declared that Prime Carbon Pty Ltd made false or misleading representations concerning the supply of its services in relation to the sale of carbon credits in promotional brochures and on its website. The ACCC is closely monitoring this industry sector and if you are making representations that you cannot substantiate, will take action to ensure compliance with the Act. [More...](#)

#### **Councils ignored fiduciary responsibilities**

10 March 2010

The author of the Cole Report has said Councils that claimed to be in accordance with state legislation when investing in CDOs ignored their fiduciary responsibilities. An increasing number of CDO investments have been classified as impaired by auditors and a range of councils have launched legal action for misleading and deceptive conduct. [More...](#)

### Victoria

#### **Council may get more say on planning decisions**

19 March 2010

The State Government is considering giving the Melbourne City Council more power to consider large planning applications, with the Minister approving the contentious \$200 million redevelopment of Melbourne's Windsor Hotel. Projects with more than 25,000 square metres of floor space are currently handled by the Planning Minister, Justin Madden. [More...](#)

#### **National Trust set for hotel battle**

19 March 2010

The National Trust is preparing an appeal against the state government's decision to approve the controversial Windsor Hotel redevelopment, which was attacked as sacrificing heritage for money. Mr Madden said two probity audits had approved the decision-making process, and he made the decision based on two independent reports and not on any advice his media adviser provided. [More...](#)

#### **Conditional Planning Permit granted for Hotel Windsor**

18 March 2010

Planning Minister Justin Madden today granted a conditional planning permit for the \$200 million refurbishment and redevelopment of the Hotel Windsor. [More...](#)

#### **Company pays out for grassland clearing**

17 March 2010

A Victorian investment company will pay \$62,000 towards conservation research and protect up to 13 hectares of threatened species habitat after breaching national environment law. Cromwell Property Securities agreed to the enforceable undertaking under national environment law with the federal environment department as an alternative to the matter going to court. [More...](#)

## Whats News? - Property, Planning & Environment

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### Victory against unlicensed Conveyancer

18 March 2010

An unlicensed conveyancer has been restrained from conducting an unlicensed conveyancing business, after the Melbourne Magistrates' Court found he had been operating his business illegally and misleading consumers. [More...](#)

### Vic councils awarded sustainability grants

16 March 2010

The Victorian State Government has announced the latest winners of grants to help integrate sustainability into the planning process. Projects to further integrate sustainable thinking into planning and help councils tackle climate change were announced as recipients of the \$1.3 million in Victorian Local Sustainability Accord grants. [More...](#)

### Victorian solar power station stays in local hands

16 March 2010

Plans to build one of the world's largest solar power plants in Victoria have resumed. [More...](#)

### Expanded Industrial hub to create over 600 new jobs

15 March 2010

The major expansion of a Geelong industrial hub that has the potential to generate more than 600 jobs will proceed after the Victorian Government today announced \$2 million towards building vital infrastructure for the precinct. [More...](#)

### Way clear for Torquay Civic & Community Precinct

15 March 2010

Planning Minister Justin Madden has amended the Surf Coast Planning Scheme to facilitate construction of the proposed \$23.7 million Civic and Community Precinct development in Torquay North. [More...](#)

### Geelong Camera trial to reduce truck noise

12 March 2010

A new noise camera system will be used to monitor heavy vehicles on the Geelong Ring Road near Waurm Ponds as part of a Brumby Labor Government commitment to reduce excessive engine brake noise on Victorian roads. [More...](#)

### Channel deepening wins national infrastructure award

12 March 2010

The recently completed Channel Deepening Project in Port Phillip Bay, Victoria's largest ever marine infrastructure project, has beaten strong competition to win the prestigious National Infrastructure Award. [More...](#)

### Victorian legal panel to focus on climate change

15 March 2010

The Victorian Bar is forming a panel of barristers to specialise in cases involving climate change and testing out new government regulations likely to be introduced to deal with global warming. [More...](#)

### Victoria's waterwise towns revealed

11 March 2010

The Victoria government has revealed Victoria's most water efficient towns. According to the latest water figures, Sunbury and Macedon in north-west Melbourne are the most water efficient, using 145 litres per person per day. Premier Brumby also announced that Victorian companies Page Steel and OneSteel have been awarded \$24 million in contracts for work on the desalination plant project. [More...](#)

### Airport takes advantage of consumers on parking

12 March 2010

Consumer Commission (ACCC) has found Melbourne Airport is making more money from car parking fees than any of the country's other main airports. The ACCC says the airport made \$94.8 million in parking fees in the year to 2008. [More...](#)

## New South Wales

### Local heritage under threat

15 March 2010

A number of councils across New South Wales are failing to list significant heritage items on their Local Environmental Plans, the National Trust of Australia has said. Department of Planning directives require councils to list heritage items on their LEPs, but at least five councils have failed to list any items in their area. [More...](#)

### Elected officials responsible for financial decisions:

#### Woodward

15 March 2010

New guidelines on council investments will ensure that elected officials do not delegate financial decision making, according to the NSW department of premier and cabinet. Part of the guidelines will clarify where accountability lies, he said, and would ensure councils are more business-like in the way they invest. [More...](#)

### NSW private land to be seized for housing

12 March 2010

Legislation for a new development authority in NSW will be introduced before June in an attempt to increase housing construction rates, which are the lowest on record even though the city's population is growing at the fastest rate since the 1960s. The laws, believed to be the first of its kind in Australia, will give the authority sweeping powers to compulsorily acquire and rezone privately owned land for resale to developers. [More...](#)

## Queensland

### Residential valuations tipped to rise

15 March 2010

Residential property owners in Brisbane and Moreton Bay should expect their land values to increase in this year's valuations by the Department of Environment and Resource Management (DERM). The department will issue valuations before the end of this month and they will take effect on June 30. Click here to download a copy of the report. [More...](#)

## Whats News? - Property, Planning & Environment

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### Queensland legislation cracks down on foil ceiling insulation

10 March 2010

The Queensland state government has introduced new mandatory safety measures to minimise the risks associated with electrically conductive foil ceiling insulation. A Ministerial Notice under the Electrical Safety Act 2002 requires insulation installers to arrange an inspection by a licensed electrical contractor before foil insulation is installed in a ceiling and applies from 10 March, 2010.

[More...](#)

### Reforming Queensland's land valuation system

9 March 2010

Premier Anna Bligh has announced significant changes to the Queensland land valuations system to provide greater certainty and align Queensland with other States. The Premier has today committed to moving to site valuation, consistent with other jurisdictions and in line with what the property industry and local government have been seeking for some time. The Government will put in place a new structure to reform the state valuation services including the appointment of an independent Valuer General to provide transparency in the assessment and issuing of valuations. [More...](#)

### New disclosure rules and certificate for office blocks

18 March 2010

Office block owners will have to disclose the building's energy efficiency to prospective buyers or lessees under a government bill introduced into federal parliament. Mr Combet said a full building energy efficiency certificate would have to be given to interested parties and would include a star rating of the building's energy efficiency and additional information on how efficiency could be improved. [More...](#)

### LNG looks to other parties for Gladstone sale

16 March 2010

Liquefied Natural Gas (LNG) Ltd has amended its heads of agreement (HOA) with Arrow Energy Ltd over the proposed \$51 million sale of the Fisherman's Landing LNG project in Gladstone to allow it to look at alternative partners after Arrow became a takeover target. Under the renegotiated terms either party can terminate the deal with one day's notice and will not face liability at the termination of the contract. [More...](#)

## Articles

### National

#### Legal consequences of climate change for the Property sector

**Author:** Fitzgibbon, Tarnya et al

**Source:** Property Australia, 2010, Vol 24, No 6, March, pp46-47

#### Guarantees, subrogation and constructive trusts

**Author:** Butt, Peter

**Source:** Australian Law Journal, 2010, February, pp75

#### Escheat: A medieval doctrine revisited

**Author:** Butt, Peter

**Source:** Australian Law Journal, 2010, February, pp76

#### Caveats and the rights of prior mortgagees

**Author:** Butt, Peter

**Source:** Australian Law Journal, 2010, February, pp77

#### Climate change: is the tide turning

**Author:** Hopewell, Stafford

**Source:** Proctor, 2010, Vol 30, No 2, p18  
Flooding issue – cases and legislation

#### Adapting to climate change in Australia: position paper

**Author:** Australia. Dept. of Climate Change, 2010, pp18

Climate change (Anthropogenic); Climate change adaptation and mitigation; Climate change policy; Natural resource management; Sea levels; Federal state relations; Council of Australian Governments. [More....](#)

## Practice Notes/Directions

### National

#### National Building Standards: Access to Premises

The Commonwealth Government's initiative introduces new national standards for publicly accessible buildings that will make those buildings more accessible for people with a disability. The Disability Standards for Access to Premises will commence on 1 May 2011.

[More...](#)

### Victoria

#### Planning permit granted for Hotel Windsor

A planning permit for the refurbishment and redevelopment of the Hotel Windsor has been granted. [More...](#)

#### Victorian Integrated Housing Strategy released

The Government has released the Victorian Integrated Housing Strategy which identifies future directions and priorities critical in ensuring that housing for Victorians is more affordable, accessible and sustainable. [More...](#)

#### Currently Inviting Submissions

[EPA Draft Noise Guidelines](#) - Comments by Friday 26 March 2010.

[Caravan Park Regulations 2010 Regulatory Impact Statement](#) - Comments by 12 April 2010

[Coastal Climate Change Advisory Committee's Issues and Options Paper](#) - Comments by Monday, 26 April 2010.

## Whats News? - Property, Planning & Environment

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### Panel Reports

**Bass Coast C101:** Residential development of Lots 1-13 Vickers Avenue, Wonthaggi.

**Hotel Windsor Site Advisory Committee:** Development of the Windsor Hotel site at 137 Spring Street and 1-17 Bourke Street, Melbourne.

### Consultation to open for proposed new power station

Planning Minister Justin Madden will release the Environment Effects Statement (EES) for the proposed Shaw River gas-fired power station, near Orford in Western Victoria, on Friday 12 March 2010 and invite public comments on the project. The EES takes into account the potential impacts associated with the construction of these pipelines on flora and fauna, waterways and Aboriginal heritage. The EES and other relevant statutory documents are on exhibition from 12 March to 27 April. [More...](#) [More...](#)

### VIC: Window solutions for use in the highest Bushfire Attack Levels BAL-FZ

Victorians in BAL-FZ, the highest bushfire attack level under the Australian Standard for building in bushfire-prone areas, now have a window available. The Building Commission announced today that a combined window and screen system manufactured for use in BAL-FZ, has been released onto the market that meets the criteria of a system tested by the Building Commission to the Australian Standard, AS 1530.8.2. [More...](#)

### VIC: Private Bushfire Shelter Accreditation

11 March 2010

The Building Commission today confirmed that a private bushfire shelter has been accredited for use on sites assessed up to and including the highest bushfire attack level, BAL-FZ. Currently there is no National Standard for the design and construction of private bushfire shelters. The Australian Building Codes Board is currently preparing such a Standard, however this will not be ready for take up by the States until May 2010. [More...](#)

### New South Wales

#### Major project declarations and threshold criteria

15 March 2010

There has been some misunderstanding about application of the \$100 million threshold criteria. Under the Major Development SEPP the NSW Government is the consent authority for residential, retail or commercial projects worth over \$100 million. Where the proposal is not permitted in the relevant land-use zone, there is discretion as to whether the Government becomes the consent authority and each proposal is considered on its merits.

[More...](#)

#### Metropolitan Strategy review discussion paper released

17 March 2010

A scheduled review of the strategy is underway through the release of a discussion paper, Sydney Towards 2036. This is the first step in a comprehensive review of the Metropolitan Strategy and sets out the challenges facing Sydney over the next 25 years.

[More...](#)

### Queensland

#### Parliament First home-owner cap and 'top-hatting' relief legislation

9 March 2010

Introduced legislation into the Parliament, the Revenue and Other Legislation Amendment Bill 2010, introduces measures to increase business investment in Queensland and will see relief given from duties paid to facilitate the restructure of stapled entities. The legislation will also cap the State Government's \$7,000 First-Home Owner's grant to homes worth up to \$750,000 from 31 March... [More...](#)

## Legislation

### Commonwealth

#### Disability (Access to Premises - Buildings) Standards 2010

15 March 2010

These Standards set performance requirements and provide references to technical specifications to ensure dignified access to, and use of, buildings for people with disability. [More...](#)

#### Personal Property Securities (Corporations and Other Amendments) Bill 2010

11 March 2010

A Bill for an Act to amend certain Acts as a consequence of the enactment of the Personal Property Securities Act 2009, to amend that Act, and for related purposes. [More...](#)

#### Water Act 2007 - Accreditation of amendment of transitional water resource plan - River Murray Prescribed Watercourse Water Allocation Plan

15 March 2010

This instrument accredits the amendments to the River Murray Prescribed Watercourse Water Allocation Plan that were made under s 89(2)(f) of the Natural Resources Management Act 2004(SA). The River Murray Prescribed Watercourse Water Allocation Plan is a transitional water resource plan under item 7 of the table in Schedule 4 to the Water Act 2007. [More...](#)

## Whats News? - Property, Planning & Environment

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### Environment Protection and Biodiversity Conservation Act - section 269A - Instrument Adopting and Revoking Recovery Plans (01/03/2010) (QLD, VIC, WA)

11 March 2010

Legislative Instrument - F2010L00625

This instrument revokes a number of recovery plans and adopts 2 Queensland recovery plans, 15 Victorian recovery plans and 21 Western Australian recovery plans for listed threatened species pursuant to section 269A(7) of the Environment Protection and Biodiversity Conservation Act 1999. [More...](#)

### Environment Protection and Biodiversity Conservation Act 1999 - section 269A - Instrument Adopting Recovery Plan (05/03/2010) (NSW, QLD)

15 March 2010

This instrument adopts one recovery plan prepared by New South Wales and Queensland, for listed threatened species pursuant to section 269A(7) of the Environment Protection and Biodiversity Conservation Act 1999. [More...](#)

## Cases

### Commonwealth

#### ***Sampi on behalf of the Bardi and Jawi People v State of Western Australia* [2010] FCAFC 26**

NATIVE TITLE – native title determination application – recognition of native title – principles – Native Title Act 1993 (Cth) – native title claim group – whether one or two societies at sovereignty – whether there has been continuity and evolutionary change post-sovereignty – extent of rights and interests to land and water – offshore areas – intertidal zone – right to protect. [More...](#)

#### ***Edwards v Santos Limited (No 2)* [2010] FCA 238**

Costs – Discretionary power to award costs under Federal Court of Australia Act 1976 (Cth) s 43 – Where native title questions involved – Whether the Native Title Act 1993 (Cth) s 85A can be taken into account in the exercise of discretion to award costs – Held even though not directly applicable, “spirit” of s 85 relevant – Held that “spirit” did not displace usual rule that costs follow the event in circumstances where prior intermediate appellate authority highlighted a lack of standing and jurisdiction. [More...](#)

#### ***La Trobe Capital & Mortgage Corporation Limited v Hay Property Consultants Pty Ltd* [2010] FCA 250**

Trade Practices – misleading or deceptive conduct – loss or damage under s 52 – valuation of property intended as security for loan – loss of opportunity to advance funds – damages for loss of interest. [More...](#)

### Victoria

#### ***Truyen v Ly & Lay Holdings Pty Ltd (Retail Tenancies)* [2010] VCAT 244**

Retail lease, terms of lease not given to the Tenant, whether terms incorporated into lease, termination of lease, withholding rent, failure to pay rent, whether repudiatory, alleged failure to repair by Landlord, Tenant's goods, sale of goods by auction, notice of auction, allegedly missing goods, goods not sold, claims arising out of inability to conduct business at the premises, landlord's claims for rent, outgoings and advertising. [More...](#)

#### ***Keam v Mason & Ors (Real Property)* [2010] VCAT 242**

Sale or partition, s.229 Property Law Act 1958, practicality of the division of the land, attachment, special value. [More...](#)

#### ***WROB Pty Ltd v Hunt & Ors (Retail Tenancies)* [2010] VCAT 245**

Retail tenancy – form of lease signed by Tenant and guarantors – material alteration by Landlord after execution – form of lease avoided against Tenant and Guarantors – form of lease relied upon not proven - informal lease agreement – no right of re-entry by Landlord for breach of a covenant that is not a condition of the grant – agreement not making payment of rent a condition of the grant – no right of re-entry - non-payment of rent – purported re-entry by Landlord – where right of re-entry available - formal common law demand necessary – no such demand made – purported re-entry unlawful – damages for loss of chance that tenant would have traded profitably in the premises – evidence that tenant trading at a loss – chance found to have no value – damages in contract – nominal damages awarded for breach of covenant of quiet possession – agreement to sell plant and equipment – price payable in instalments – right of vendor to avoid agreement and resume ownership of equipment if instalments not paid – less than half the instalments paid – vendor elects to resume ownership of equipment – claim by vendor for balance of purchase price dismissed – no part of purchase price stated to be deposit – vendor ordered to repay the instalments of the purchase price paid by the purchaser – damages. [More...](#)

#### ***Rast v Rajakovic (Retail Tenancies)* [2010] VCAT 246**

Landlord not entitled to exercise right of re-entry, tenants entitled to damages, tenant entitled to costs under section 92(2). [More...](#)

#### ***Bite Food Group Pty Ltd v Ubertas Funds Management Pty Ltd (Retail Tenancies)* [2010] VCAT 253**

Retail lease – demolition clause – early termination of term – consequential loss of fit out – claim by tenant for compensation for fit out – Retail Lease Act 2003 s.56 – how compensation is calculated – apparent practice of Landlords to attempt to avoid the effect of the section by reliance on reinstatement clause disapproved of. [More...](#)

## Whats News? - Property, Planning & Environment

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### ***Butten v Khung & Ors (Real Property) [2010] VCAT 252***

Owners Corporation, application under s34D Subdivision Act 1988, purposes under s32, Consent on behalf of dissenting unitholders, powers under s34D, enquiries to be taken into account, benefits and disadvantages to consenting owners and dissenting owners, assessment under ss.34D(3)(c). [More...](#)

### ***Sun & Anor v Younan (Retail Tenancies) [2010] VCAT 254***

Retail tenancy – landlords failing to carry out structural repairs – premises unfit for occupation – Notice under Building Act 1993 prohibiting occupation – landlords forcibly taking possession without proper notice – tenancy not determined – tenant moving to alternate premises – abatement of rental and outgoings until premises again fit for occupation – cost of moving out – repairs carried out voluntarily by landlords not chargeable to tenants.

[More...](#)

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