



What's News?

Property, Planning & Environment

30 June 2009

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Latest News

National

Govt releases draft of emissions regulations

19 June 2009

A draft of regulations outlining how carbon emissions will be measured and industry compensation calculated under an emissions trading scheme have been released by the Federal Government [More...](#)

ACF accuses companies of 'misleading climate change statements'

15 June 2009

The Australian Conservation Foundation has accused six companies of making misleading statements about climate change policy [More...](#)

Victoria

Victoria smashes first home buyer record

18 June 2009

More Victorian home buyers bought their first home last month than at any other time in Victoria's recorded history with assistance from the Brumby Labor and Rudd governments. The number of first home owners grants paid to Victorians had jumped 14.8 per cent compared to the previous month and 67.5 per cent compared to this time last year, despite the impact of the Global Financial Crisis [More...](#)

\$6 Million program to build sustainable neighbourhoods

17 June 2009

Environment, Climate Change and Innovation Minister Gavin Jennings announced the Zero Emission Neighbourhood (ZEN) scheme to assist developers, local governments and community groups develop innovative projects that would be implemented in new residential developments to help make them carbon neutral [More...](#)

Grassland reserves to protect our endangered species

17 June 2009

The Brumby Labor Government will protect one of Victoria's most endangered ecosystems by acquiring 15,000 hectares of native grasslands that cover the world's largest remaining concentration of Volcanic Plains Grasslands. The grasslands would also offset the 6918 hectares of land marked for urban development under the proposed changes to the Urban Growth Boundary [More...](#)

Proposed route of regional rail link revealed

17 June 2009

Up to six new stations will be built as part of the \$4.3 billion Regional Rail Link project which will provide train services to Melbourne's growing west securing 2800 jobs in construction. The community is invited to have their say on the proposed alignment on the next stage of this vital infrastructure project which is the largest improvement to the rail network since the City Loop.

Proposed outer Metropolitan Ring Road released

17 June 2009

Public comment is invited on the proposed route of a new road highway in Melbourne's growing outer northern and western suburbs. The Outer Metropolitan Ring and E6 Transport Corridor would link Melbourne's residential and employment growth areas in the north and west, strengthening connections between international transport hubs, the Port of Geelong, interstate and regional destinations [More...](#)

Comment invited on proposed Urban Growth Strategy

17 June 2009

The public and community have been invited to make submissions on the proposed changes to Melbourne's Urban Growth Boundary (UGB) as part of the Brumby Labor Government's Delivering Melbourne's Newest Sustainable Communities package. The draft UGB also incorporates the proposed alignment of the Outer Metropolitan Ring Road, proposed alignment of the Regional Rail Link and the creation of two new grassland protected areas in Melbourne's west [More...](#)

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Slashing Planning red-tape assists bushfire rebuild

16 June 2009

The Brumby Labor Government is taking action to reduce planning red tape for victims of Victoria's devastating bushfires and has now offered a variety of assistance through building initiatives such as free information seminars and design assistance [More...](#)

EES Assessment released for Peninsula Link Project

15 June 2009

A toll-free Peninsula Link is a step closer with Planning Minister Justin Madden releasing the independent Environmental Effects Statement (EES) Inquiry Report and his assessment of the project. An independent Inquiry found many of the potential effects of the Peninsula Link project are consistent with those of a typical freeway and was confident that these issues can be satisfactorily addressed [More...](#)

Land released to house Melbourne boom

17 June 2009

The Victorian Government has announced it will release an extra 41,000 hectares of land for new housing to accommodate Melbourne's population boom. The extension of the urban growth boundary in Melbourne's north, west and south-east will accommodate an extra 284,000 new houses. The draft plan also includes the proposed alignment of the outer metropolitan ring road and the regional rail link, which will include up to six new train stations in Melbourne's western suburbs growth areas [More...](#)

Land and tax grab in Melbourne growth plan

18 June 2009

Hundreds of Victorian landholders face compulsory acquisitions and many more will be taxed thousands of dollars as green wedges make way for urban sprawl. As the Victorian government prepares for Melbourne's population to swell to five million by 2030, a blueprint for new fringe suburbs has been unveiled [More...](#)

MAV unveils councilor conduct panels

15 June 2009

The Municipal Association of Victoria (MAV) has formed new Councilor Conduct Panels to assist councils dealing with code of conduct breaches. The Association has appointed 12 panel members to address allegations of misconduct by local councillors [More...](#)

Geelong Ring Road Open And All Clear To Waurin Ponds

The Minister announces the Geelong Ring Road project is vital to securing Geelong's future and further opening up the region to Melbourne. The Ring Road and associated critical transport links are essential to supporting key industries and companies such as Ford in Geelong [More...](#)

Alliance Announced For Springvale Road Rail Project

Work on the Springvale Road Rail Separation at Nunawading is on track with the VicRoads alliance partners announced today for the \$140 million project. A new railway station for Nunawading is a key component of this project, replacing the old facilities that are used by 3,000 local commuters a day [More...](#)

New South Wales

Sydney To Imagine A New Future For Its Western Harbour

12 June 2009

Land and foreshore west of the Sydney Harbour Bridge will be recreated following one of the most interactive consultation processes in NSW Government history. Bays Precinct as a whole includes 80 hectares of NSW Government land, including five kilometres of harbour foreshore, located just two kilometres from the CBD.

'Super-agency' to have a go at sorting out NSW transport

11 June 2009

NSW Premier Nathan Rees has announced what he claims to be the most significant shake-up of the delivery of transport services in NSW history. A new super-agency, NSW Transport and Infrastructure, would take control of all transport and roads coordination, policy and planning functions [More...](#)

LGS boosts green power

11 June 2009

The \$4.6 billion NSW-based Local Government Super has become the first building owner in Australia to convert all of its tenants to 100 per cent GreenPower - making the building completely emission free. LGS, which claims the move as an Australia-first, has brought all of its existing tenants in Local Government House, located at 28 Margaret St Sydney, over to strong energy efficiency programs and to 100 per cent zero emissions GreenPower, according to the Total Environment Centre [More...](#)

Queensland

Bigger councils hit waste pay dirt

15 June 2009

Last year's local government amalgamations in Queensland, while controversial, have proven positive in at least in one respect. Some of the new, larger councils are delivering more professional and effective waste management services [More...](#)

Body Corporate and Community Management Amendment Bill 2009

The Supreme Court has dismissed an appeal where the buyer of a unit in a community titles scheme was held to have validly terminated the contract based on a technical breach of the Body Corporate and Community Management Act 1997. The Minister for Tourism and Fair Trading has introduced into the Parliament the Body Corporate and Community Management Amendment Bill 2009 in response to the decision of *Bossichix Pty Ltd v Martinek Holdings Pty Ltd* [2009] QCA 154 handed down on June 5, 2009 (18 June 2009) www.legislation.qld.gov.au

Queensland's planning and development system reforms

9 June 2009

Major reforms to Queensland's planning approvals system will see building developments get off the ground within weeks rather than months - creating and sustaining construction industry jobs as the state experiences the brunt of the global economic crisis [More...](#)

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Articles

National

Budget 2009

The Property Council details how the recently delivered Federal Budget will impact the industry

Source: Property Australia, June 2009, pp38-39

Corporate responsibility reporting: state of play [for property]

Author: McEwan, Diana

Source: Property Australia, June 2009, pp55-56

Does disclosure of some adverse information about a property increase the representor's obligations regarding the "reasonable expectation of disclosure" test

Author: Webb, Eileen

Source: Australian Property Law Bulletin, May/June 2009, Vol 23, No 9, pp102-104

Payment of a deposit by instalments and penalties: avoid the top-up

Author: Byrne, Kris

Source: Australian Property Law Bulletin, May/June 2009, Vol 23, No 9, pp105-106

Side agreement granting extension of time avoids consequences of instalment contract

Author: Duncan, Bill and Christensen, Sharon

Source: Australian Property Law Bulletin, May/June 2009, Vol 23, No 9, pp107-109

Further recognition of parking easements

Author: Webb, Eileen

Source: Australian Property Law Bulletin, May/June 2009, Vol 23, No 9, pp110-111

Practice notes/directions

Victoria

Draft CPRS regulations released

The Government has invited comment on its draft regulations for the Carbon Pollution Reduction Scheme: [More...](#)

Revised VCAT forms, notes and information

VCAT has published revised Planning and Environment List practice notes (PNPE1 to 4), application forms and updated information.

Currently inviting submissions

Future Farms: Providing for Victoria's Future Rural Land Use discussion paper, April 2009 is out for public comment and feedback by 26 June 2009.

Delivering Melbourne's newest sustainable communities

Public comment is sought on the proposed changes to the Urban Growth Boundary, transport infrastructure projects, and proposed grassland reserves [More...](#)

Frankston Bypass Assessment

The Minister for Planning has released his Assessment on the Frankston Bypass under the Environment Effects Act 1978 which concludes the EES process. The Assessment has been provided to statutory decision-makers to inform approval decisions on this project.

DPCD Activity Centres Website

The Activity Centres pages on the DPCD website have recently been updated and now include additional information about Central Activities Districts, Principal, Major and Specialised Activity Centres across Metropolitan Melbourne. A new map of Activity Centres and the Principal Public Transport Network has also been produced. The Status of M2030 Activity Centre Structure Planning spreadsheet has also been updated.

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Legislation

Victoria

Acts

Bushfires Royal Commission (Report) Act 2009 (Act No 18 of 2009) (principal)

Fair Trading and Other Acts Amendment Act 2009 (Act No 19 of 2009)

Regulations

Country Fire Authority Amendment Regulations 2009 (SR No 67 of 2009)

Country Fire Authority (Contributions) Regulations 2009 (SR No 64 of 2009)

Transfer of Land (Fees) Amendment Regulations 2009 (SR No 62 of 2009)

Cases

Victoria

Oxley v Boon VSC 222

Real property – Transfer of farming property from plaintiffs to first defendant – Plaintiffs allege transfer procured by fraud and seek order amending Register – First defendant alleges property was gift from plaintiffs – Plaintiffs deny gift or signing transfer – Transfer of Land Act 1958, s 42, s 103(1). [More...](#)

1144 Nepean Hwy Pty Ltd v Leigh Mardon Australasia Pty Ltd [2009] VSC 226

Contract – Construction of dispute resolution clause – Instigation of proceedings – Whether proceedings should be stayed due to dispute resolution clause – Whether the Court should exercise its discretion in staying the proceedings – Leases – Tenancy [More...](#)

Central Pacific Holdings Pty Ltd & Anor v State of Victoria [2009] VSC 230

Contract – Contract of sale of land by the State to the first plaintiff – Contractual promise to indemnify the first plaintiff and any Related Body Corporate for land tax liability in respect of the land sold – Whether second plaintiff a Related Body Corporate of the first plaintiff – Whether grant of indemnity extended to a Related Body Corporate that was not a purchaser under the contract – Construction of indemnity – Relevance of context and factual matrix. Statutory Construction – Broad statutory discretion in the State to contract for sale of land “for any consideration or on any other terms and conditions” – Whether contractual promise by the State to indemnify the first plaintiff and any Related Body Corporate for land tax liability in respect of the land sold was within power – Whether a specific grant of power required to confer power – ss 3, 10 and 11 Land (Revocation of Reservations) Act 1994. [More...](#)

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Re S&D International Pty Ltd (in liquidation)(receiver and manager appointed)

[2009] VSC 225

Corporations – Whether orders against mortgagee, agent in possession and receiver and manager should be made under ss 423(1), 425, 434(1) (b), 434A and 434B (1) and (5) of the Corporations Act 2001. Corporations Law – Lien for “salvage costs” – Whether equitable lien extends to cover expenses of liquidator in procuring mortgagee and agent in possession holding surplus moneys to pay those moneys into Court – Whether expenditure exclusively for that purpose – Application of principle in Universal Distributing. Property Law – Transfer of Land Act 1958 – Construction of s 77(3) – Whether surplus moneys on land sold by mortgagee held on trust for subsequent equitable mortgagees and chargees – Whether reference to subsequent mortgagees and chargees in s 77(3) (c) includes unregistered mortgagees and chargees – Whether s 77(3) should be construed subject to legal and equitable interests otherwise recognised at law – s 77(3) of the Transfer of Land Act 1958.

Property Law – Mortgage – Whether mortgagee entitled to costs, charges and expenses beyond those “properly and reasonably” incurred. [More...](#)

Gazic & Ors v Body Corporate No 300560N (Real Property) [2009] VCAT 920

Real Property List – subdivision of unit development – application to change liability of owners - incorporate a unit of property into the common property – relevant considerations – Subdivision Act 1998 s 32, 33, 34D [More..](#)

Swancom Pty Ltd v Yarra CC (includes Summary) (Red Dot) [2009] VCAT 923

Assessment of cumulative impact of licensed premises on amenity of surrounding area
Planning Scheme – interpretation or consideration of VPP provision Clause 52.27 (Licensed Premises) decision guidelines; application to extend hours and patron numbers at an existing hotel; consideration of impact on amenity of the surrounding area; consideration of cumulative impact of existing and proposed licensed premises, hours of operation and patron numbers on amenity of area. [More...](#)

Queensland

BHP Queensland Coal Investments Pty Ltd & Ors v Cherwell Creek Coal Pty Ltd [2009] QLAC 0005

Procedure – Costs – Security for costs – other matters – where the appellants initiated proceedings against the respondent for compensation pursuant to s.722G of the Mineral Resources Act 1989 (Qld) – where the appellants sought an order in the Land Court that the respondent provide security for its costs in the event that the respondent’s claim against the appellants is successfully defended – where the learned Member declined to order security – whether the learned Member erred in finding it was far from certain that an order for costs would be made in favour of the appellants – whether the general rule that costs follow the event applies [More...](#)

GPT RE Limited (as responsible entity) & Anor v Department of Natural Resources and Water [2009] QLC 0078

Statutes – construction and interpretation of Legislation – Determination of whether existing approvals associated with improvements on the land add value to the land pursuant to s.3(2B) of the Valuation of Land Act Qld 1944 – consideration of whether or not infrastructure credits associated with previous building works carried out on the land add value to the land pursuant to s.3(2B) of the Valuation of Land Act Qld 1944 as causing an increase in the value of the land that has happened in connection with a development approval, other approval or authority – treatment of infrastructure credits under s.3(1)(b) of the Act.

Real property – valuation of land – Reduction in value of land encumbered by an easement limiting flexibility of development on the land

Valuation of land – sales evidence – Application of sales – consideration given to hypothetical maximum development permitted on subject land and sales – sale of land after valuation date accepted as evidence of value – relevance of sales of significantly smaller parcels of land – treatment of sale affected by existing tenancy and demolition costs. [More...](#)

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Bossichix P/L v Martinek Holdings P/L [2009] QCA 154

Statutes – acts of parliament – interpretation – reference to framework of Statute – where s 212 of the Body Corporate and Community Management Act 1997 (Qld) states that a contract must provide that settlement must not take place earlier than 14 days after the seller gives advice to the buyer that the scheme has been established or changed – where buyer may cancel the contract if the contract does not so provide – whether a notification by the seller to the buyer that the Building Format Plan has been registered is an “advice” that the “scheme has been established” – whether the registration of the plan and the establishment of the scheme are in effect the same thing – whether s 212 requires the employment of the very words of the section – whether s 212 prohibits the parties from agreeing to an early settlement

[More...](#)

Connor Hunter (A Firm) v Keencrest P/L & Ors [2009] QCA 156

Landlord and tenant – rent – provisions as to rent in agreement for lease or lease – rent review clauses – the appellant firm drafted a lease containing mechanisms for reviewing the rent payable – where one was referenced to the Consumer Price Index and the other was referenced to market price – where it was held by the primary judge that the two clauses relating to rent review were invalidated by the Retail Shop Leases Act 1994 (Qld) on the grounds that it provided multiple bases for review – whether the clauses in question were invalid [More..](#)

Grummitt Planning Pty Ltd v Gold Coast City Council & Anor [2009] QPEC 047

Integrated Planning Act s 4.1.5A, s 4.1.52(2) (b) - non-compliance with public notification requirements by failure to place a sign on one of the site's three frontages excused - that frontage was to a cul de sac serving only one residential property whose owner received individual notification as a neighbour - it was impossible to get to the cul de sac without passing at least one of the signs placed - certain changes to proposal held to be minor changes [More...](#)

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