

**Planning & Environment News – 27 April 2018**

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In the media - National

Australian company will convert China's waste plastics to fuel

IGESCSW Australian company, Integrated Green Energy Solutions (), has announced a joint venture agreement with the Chinese Crown World Holdings () to expand its plastic-to-fuel production operations in China (18 April 2018). More...

Investment in recycling would mean more Australian jobs

ACOR About 500 jobs could be created if Australia domestically remanufactured 50 per cent of the material formerly sent to China before a ban on waste imports, according to a new report commissioned by the Australian Council of Recycling (). Conducted by MRA Consulting, the report found that investment in domestic remanufacturing could also significantly reduce carbon emissions equivalent to taking 50,000 cars off the road (17 April 2018). More...

Incentives for developers could help create more affordable housing

Record house price growth in Australia has led to calls to ease supply-side restrictions to open up more affordable housing for low and middle-income households. The AHURI has weighed in on Australia's housing affordability challenges, suggesting the answer may lie with planning schemes such as inclusionary zoning and density bonuses (11 April 2018). More...

Extreme downsizing: Could you live on a block the size of an AFL goal square

Forget the quarter-acre block — a new property push is on to find buyers willing to live on land that's smaller than three shipping containers side by side. But banks are sounding a warning to small home owners (11 April 2018). More...

New building energy performance standards will save money, emissions

In a welcome step forward for the economy and the environment, draft changes to Australia's Building Code will improve energy efficiency standards in commercial buildings. The draft Code includes significant new measures to improve compliance with energy efficiency standards for new homes; however, minimum energy performance standards remain the same for residential buildings (09 April 2018). More...

Climate change litigation rising with the seas as victims revert to 'Plan B'

Across the world a shift towards climate change litigation is gathering steam as low-lying island countries and even United States' cities take aim at governments and big oil companies for failing to act proportionately to reduce carbon emissions (10 April 2018). More...

In the media - Victoria

Fishermans Bend developer sues minister over massive apartment project

A developer is suing Planning Minister Richard Wynne after his ambitious apartment tower plans were caught up in a mass freeze of projects at Fishermans Bend. Developer David Joachim lodged his Supreme Court

case last month, after Mr Wynne seized planning control for 26 development sites in the Fishermans Bend area in February (19 April 2018). [More...](#)

Pick your Project: New fund for locals, decided by locals

Local projects will be chosen by local residents under a new community building fund, which will see Victorians nominate and decide on their own funding priorities. Projects between \$20,000 and \$200,000 will be eligible under the program (18 April 2018). [More...](#)

Applications open for recycling industry relief package

A \$1 million funding package is available to Victoria's recycling industry to help it make the transition to new market conditions after China's decision to stop imports of low-quality mixed recyclables (09 April 2018). [More...](#)

In the media - New South Wales

NSW government to fast-track approvals for medium-density housing

Medium-density housing types such as terrace houses will be easier to build in New South Wales, following changes to the housing code. Under the new code, manor houses (single buildings comprising three or four homes), dual-occupancies and terraces houses will also be eligible for a complying development approval. [More...](#)

Excessive car parking requirements will make boarding houses unviable

The proposed changes to the NSW Affordable Rental Housing SEPP to increase car parking requirements will make boarding houses unviable, says the Urban Taskforce (17 April 2018). [More...](#)

Government to support councils with Low Cost Infrastructure Loans

The NSW Government will invest \$31 million for councils to build up to \$500 million worth of essential infrastructure to support growing communities (17 April 2018). [More...](#)

Strata legislative changes should clarify mixed use buildings

The proposed amendments to the Strata Act clarify a number of issues but raise further concerns about the practical implementation of the building defects scheme, says Urban Taskforce CEO, Chris Johnson (13 April 2018). [More...](#)

New Greenfield Code welcomed

The Property Council today welcomed the State Government's new Greenfield Housing Code that allows one and two storey homes, renovations and extensions to be carried out under a fast-track complying development approval. The changes start on 6 July 2018 (11 April 2018). [More...](#)

Online tool to help governments plan solar use

APVI A new platform that calculates the solar power potential of rooftops promises to help local councils and urban planners make decisions about investments in solar. The SunSPoT online tool has been developed by Australian PV Institute () and UNSW with technology partners Solar Analytics and Enosi (13 April 2018). [More...](#)

In the media - Queensland

Land of the legends is the Nywaigi people's own

North Queensland's Nywaigi People, operators of the award-winning Mungalla Station tourist attraction, now hold the native title rights to the land and waters where their legends have been formed (20 April 2018). [More...](#)

Locals invited to have their say on solar farm development guidelines

Bundaberg locals are invited to have their say on new guidelines that will guide the sustainable development of Queensland's solar farm boom. With 16 large-scale solar farms under construction across the state and another 40-plus potentials, specific planning guidelines would help the development, construction and approval process (17 April 2018). [More...](#)

'Very rare' win against gas company for serious harm sounds a warning

The successful prosecution of Linc Energy for serious environmental harm is "very rare" and puts Queensland industry firmly on notice, an environmental lawyer says (10 April 2018). [More...](#)

Gas company 'knew it was causing damage but allowed it to continue'

Linc Energy is found guilty of wilfully causing serious environmental harm at its underground coal gasification plant and allowing operations in Queensland to continue for commercial gain (09 April 2018). [More...](#)

More consultation required before developers can build at sports clubs

Allowing aged care and retirement facilities to be built in sport and recreation zones is one step closer, but significant community consultation will be required before the amendment is given the final tick of approval (09 April 2018). [More...](#)

In Practice and Courts

Commonwealth

RET: March Large-scale Renewable Energy Target market data now available

The Clean Energy Regulator has released March 2018 Large-scale Renewable Energy Target market data (18 April 2018). [More...](#)

Solar Communities Program round 2 announced

Guidelines for round 2 of the Solar Communities Program are now available. Round 2 of the Program will be open to applications from 13 March 2018 to 31 May 2018. [More...](#)

Announcements, Draft Policies and Plans released 2017

Victoria

Notice of the preparation of an amendment - Amendment C323

CCZ3GRZ1CCZ7 The Melbourne City Council has prepared Amendment C323 to the Melbourne Planning Scheme. The amendment inserts Schedule 7 to the Capital City Zone and rezones the land from Capital City Zone 3 () and General Residential Zone 1 () to Capital City Zone 7 () on a permanent basis, in order to promote uses that support the role of the State Significant Melbourne Arts Precinct. The closing date for submissions is Monday 21 May 2018. [More...](#)

New South Wales

Greenfield Housing Code

Note: With changes start on 6 July 2018, the new Code will be included in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. In essence; it is a simplifying of the development process and aligning the requirements for development across greenfield areas; the planning rules and the code are also presented in plain English to clearly explain planning rules (11 April 2018). [More...](#)

There will be a three-year transitional period, where applicants can choose whether to use the Greenfield Code, or the new simplified Housing Code or Transitional Code (until 13 July 2019).

Queensland

Reminder: Investigation and prosecution of Linc Energy Limited

A Brisbane District Court jury convicted Linc Energy Limited of all five (5) counts of wilfully and unlawfully causing serious environmental harm, in contravention of the Environmental Protection Act 1994. These verdicts conclude a 10-week trial, which is the culmination of the largest and most complex environmental investigation conducted by the environmental regulator in Queensland's history. The matter has been listed for sentencing on 11 May 2018. [More...](#)

Cases

Federal

Triabunna Investments Pty Ltd v Minister for the Environment and Energy[2018] FCA 486

ENVIRONMENT LAW - application for judicial review of referral decision under the Environmental Protection and Biodiversity Conservation Act 1999 (Cth) - whether s77 of the EPBC Act is the source of the Minister's

power to determine whether a proposed action is a controlled action - where action determined not to be a controlled action if carried out consistently with specified manner provisions - whether Court has power to order the Minister to correct a s77 notice - contention that the proposed action evolved or was varied from that initially referred by proponent - whether proponent sought to vary proposed action - whether Minister unilaterally varied proposed action - whether Minister erred in failing to consider the impacts of the proposed action on World Heritage and National Heritage listed site - contention that procedural fairness required further information to have been published to allow the general public and first and second applicants subsequent opportunity to comment - whether first and second applicants have a special interest likely to be affected by the proposed action - whether further information altered the proposed action - application dismissed.

Administrative Decisions (Judicial Review) Act 1977 (Cth), ss5, 16; Environment Protection and Biodiversity Conservation Act 1999 (Cth), ss18, 18A, 20, 20A, 68, 72, 74, 75, 76, 77, 77A, 156A, 523; Environment Protection and Biodiversity Conservation Regulations 2000 (Cth), Sch 2.

Victoria

Hay v East Gippsland SC[2018] VCAT 565

Victoria Regional Energy project; use and development of a utility installation; Daughter Station; reticulated natural gas; transmit and distribute; amenity; noise; health and safety.

New South Wales

Wirrabara Village Pty Limited v The Hills Shire Council[2018] NSWLEC 1187

DEVELOPMENT APPLICATION: Seniors housing development; Site Compatibility Certificate issued by the Department of Planning and Environment; prohibited development; whether the site adjoins land zoned primarily for urban purposes; location and access to services; impacts on threatened species; bushfire risk; exceedance of the height of buildings development standard; amenity.

Denning Tweed Heads Pty Ltd v Tweed Shire Council No. 2[2018] NSWLEC 1186

DEVELOPMENT APPLICATION: Subdivision for 59 residential allotments and one residual allotment; proximity to the Gold Coast Airport and impact of aircraft noise; impact on endangered ecological communities; stormwater.

The Owners - Strata Plan 49574 v Scorpio Holdings (Aust) Pty Limited & Ors[2018] NSWLEC 54

PRACTICE AND PROCEDURE - strata renewal plan - necessity of position papers prior to mediation in proceedings under s179 Strata Schemes Development Act 2015 - such position papers to be provided in a timely manner prior to mediation - respondent (dissenting owner) sought security for costs of proceedings - applicability of terms 'defendant' and 'plaintiff' in the context of the Strata Schemes Development Act 2015 - applicability of term 'security for costs' in such proceedings.

Plumpton Park Developments Pty Ltd v SAS Trustee Corporation[2018] NSWSC 461

LAND LAW — easements — construction of easements — whether benefit of easement extends to land consolidated into a single lot with original dominant tenement. LAND LAW — easements — registration of easements — Section 88B instruments.

Woolworths Limited v Randwick City Council[2018] NSWLEC 1183

APPEAL - development application - conversion of club to liquor store - statutory construction of Local Environmental Plan - development for the purposes of a shop.

Albert v Kiama Municipal Council[2018] NSWLEC 1178

APPEAL - development application - consent orders - medical centre - permissibility - consistency with zone objectives - parking - traffic - height and floor space ratio - compatibility - tree loss - streetscape and setbacks - overshadowing - view loss - amendments required to achieve view sharing.

Norwest City Pty Ltd ATF Norwest City v Valuer General[2018] NSWLEC 50

GFA VALUATION - appeal against statutory valuation - valuation site zoned B2 - Local Centre - highest and best use agreed to be a large mixed use development combining retail, commercial and residential elements - town planners agree on gross floor area () yield from hypothetical redevelopment of the valuation site - differences between expert town planners as to the break-up of the GFA between the development types - rejection of portion of the Respondent's valuer's evidence - agreement by expert valuers that comparative

sales analysis to derive an analysed rate per square metre of GFA was appropriate valuation approach - expert valuers disagreed on application of valuation approach - Applicant's valuer derives a single analysed, derived rate from sales to be applied to total GFA for the valuation site - Respondent's valuer derives separate analysed, derived rates from sales to be applied to different GFA components for the valuation site - Respondent's valuer's sales considered and rejected - piecemeal approach no longer relevant as a consequence - no need to resolve town planners' differences - Applicant's valuer's sales considered - one previously rejected as in common with the Respondent's valuer's sales - three remaining sales considered - two rejected - remaining sale provides sufficient basis for valuation comparison - Applicant's valuer's sales adjustments to be preferred over those of the Respondent's valuer - resultant rate per square metre of GFA to be applied to the valuation site shows lower base-date valuation - onus pursuant to s40(2) of the Valuation of Land Act 1916 satisfied - lower valuation ordered in substitution for that subject of the appeal.

TC (Tallwoods) Pty Ltd v Liverpool City Council[2018] NSWLEC 48

PROCEDURE - application for expedition - failure of Council to accept development application potentially in breach of statutory duty - relevance of Applicant being prevented from exercising put and call options - relevance of consequential financial hardship - expedition granted.

JET Group Australia Pty Ltd v Environment Protection Authority[2018] NSWLEC 49

APPEAL - appeal pursuant to s56A of Land and Environment Court Act 1979 - appeal confined to questions of law - appeal against conditions imposed by Commissioners on an Environment Protection Licence. APPEAL - first ground of appeal that Commissioners failed to give reasons for imposing contested element of an operational condition - issue clearly in contest - issue subject to partial agreement by relevant experts - although this contested issue was not subject of submissions by counsel for the Appellant before the Commissioners, it was expressly addressed by counsel for the Respondent who clearly set out the nature of the competing positions - issue not merely subsidiary or incidental or subsumed by matter in contest addressed by the Commissioners - condition sought by the Respondent incorporated in conditions imposed by order (2) made by the Commissioners - no explanation given by the Commissioners for adopting the position advanced by the Respondent in preference to that sought by the Appellant - absence of reasons on contested issue vitiated the Commissioners' decision to impose the condition - matter remitted for determination of contested condition. APPEAL - second ground of appeal that Commissioners relied on the provisions of the wrong statute in imposing a condition requiring the Appellant to provide financial assurance in a specified amount to the Respondent - ground conceded by the Respondent - concession properly made - matter remitted for determination of financial assurance issue pursuant to correct statutory provisions. COSTS - costs follow the event in s56A appeals - Respondent to pay Appellant's costs as agreed or assessed.

Raphael Shin Enterprises Pty Ltd v Minister for Planning[2018] NSWLEC 42

PROCEDURAL AND OTHER RULINGS - whether separate question should be ordered in Class 1 proceedings - land use definition of eco-tourist facility tied to a prospective assessment of the proposal against "performance" criteria requiring expert evidence - significant overlap of questions of law and fact such that economies in time and expense unlikely to be achieved - relevance of state significant development being capable of securing consent even though partly prohibited.

Queensland

Boral Resources (Qld) Pty Limited v Gold Coast City Council[2018] QCA 075

ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING - PLANNING SCHEMES AND INSTRUMENTS - QUEENSLAND - GENERALLY - where the respondent refused to grant the applicant a permit for a material change of use of land - where the proposal was for the development of a large hard rock quarry in the Gold Coast Hinterland - where the applicant submitted that the primary judge did not give a practical, common-sense meaning to s3.5.5.1(10) of CityPlan 2016 - where the applicant submitted the words "appropriately" or "to an acceptable level" ought to have been interpolated into s3.5.5.1(10) - whether the primary judge erred in law in interpreting s3.5.5.1(10).

ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING - PLANNING SCHEMES AND INSTRUMENTS - QUEENSLAND - GENERALLY - where the respondent refused to grant the applicant a permit for a material change of use of land - where the proposal was for the development of a large hard rock quarry in the Gold Coast Hinterland - where the primary judge found that the proposal would conflict with s3.5.5.1(10)(b) of CityPlan 2016 - where the applicant submitted the primary judge mischaracterised the koala habitat that exists on the land as a matter of environmental significance - where the applicant submitted it is the koala that is a matter of environmental significance, not its habitat - where there were 23,000 non-juvenile koala habitat trees on the subject land - whether the primary judge erred in characterising the whole of the quarry footprint as a matter of environmental significance for the purposes of s3.5.5.1(10)(b).

ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING - PLANNING SCHEMES AND INSTRUMENTS - QUEENSLAND - GENERALLY - where the respondent refused to grant the applicant a permit for a material change of use of land - where the proposal was for the development of a large hard rock quarry in the Gold Coast Hinterland - where the applicant conceded its proposal conflicted with the Gold Coast Planning Scheme 2003 - where the primary judge observed that if the applicant's proposal does not succeed under CityPlan 2016, its prospects of success under the Gold Coast Planning Scheme 2003 are even more unlikely - whether the primary judge failed to apply s25 and s36 of the Sustainable Planning Act 2009 (Qld) with respect to State Planning Policy 2013 and the South East Queensland Regional Plan respectively.

ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING - PLANNING SCHEMES AND INSTRUMENTS - QUEENSLAND - GENERALLY - where the respondent refused to grant the applicant a permit for a material change of use of land - where the proposal was for the development of a large hard rock quarry in the Gold Coast Hinterland - where CityPlan 2016 was a relevant instrument - where the applicant submitted that the primary judge failed to give adequate reasons for his decision - whether the primary judge erred by failing to give adequate reasons for his decision.

ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING - PLANNING SCHEMES AND INSTRUMENTS - QUEENSLAND - GENERALLY - where the respondent refused to grant the applicant a permit for a material change of use of land - where the proposal was for the development of a large hard rock quarry - where the primary judge refused the application, but observed that the resource should be protected for future exploitation - where the applicant submitted this reasoning was irrational and illogical - where the applicant submitted unless the resource is exploited now, it will never be exploited - where the respondent submitted the primary judge's observation envisaged that the resource may become exploitable at some time in the future under a later planning scheme - whether there was irrationality in the primary judge's determination that there were not "sufficient grounds" to justify approval.

Springsure Creek Coal Pty Ltd v Arcturus Downs Limited (No. 2)[2018] QLC 8

ENERGY AND RESOURCES - MINERALS - MINING FOR MINERALS - TITLES: RIGHTS, PERMITS, LICENCES AND LEASES ETC - where application for mining lease initially filed and approved by mining registrar varies from application for mining lease presently before the Land Court of Queensland for objection hearing - whether change in ownership of company applying for mining lease is sufficient to make the application substantially different - whether the application is so different that the application no longer complies with the requirements under the Mineral Resources Act 1989 - whether these differences amount to failure to comply with the requirements under the Act - whether the applications are void - whether the Land Court has jurisdiction in the situation where the applications are considered to be non-compliant with the requirements under the Act.

ENERGY AND RESOURCES - MINERALS - MINING FOR MINERALS - ENVIRONMENTAL PROTECTION LEGISLATION - where the areas under the mining lease and environmental authority applications are subject to the Strategic Cropping Land Act 2011 - where environmental authority cannot issue until strategic cropping land protection decision has been made - where strategic cropping land decision has been made - whether the applicant for the environmental authority can meet the conditions imposed by the strategic cropping land decision - where strategic cropping land conditions refer to 'good quality agricultural land' - whether rehabilitation to 'best possible class of agricultural land' includes returning the land to its condition prior to the mining - whether this is possible in the circumstances - whether this is a requirement under the Strategic Cropping Land Act 2011 - whether evidence led that the applicant cannot possibly return the land to this condition should result in a decision not to recommend the mining lease be granted.

Moreton Bay Regional Council v Fairland Group Pty Ltd[2018] QPEC 019

PLANNING AND ENVIRONMENT - APPLICATIONS - Excusal Non-Compliance - application for reconfiguration into 175 lots, later changed application effective after decision stage - whether non-compliance was failure to decide, or extend time, to decide within time - Was the development application properly made and processed - Was it capable of approval as proposed - Whether the deemed approval is subject to council notified conditions or imposed Minister's standard conditions - Whether or not the court should excuse the non-compliance under s37 - Have the developers acted to their detriment in reliance upon the deemed approval - Whether in the interests of the community through proper planning including draft amends to planning scheme and unplanned infrastructure.

This publication does not deal with every important topic or change in law and is not intended to be relied upon as a substitute for legal or other advice that may be relevant to the reader's specific circumstances. If you have found this publication of interest and would like to know more or wish to obtain legal advice relevant to your circumstances please contact one of the named individuals listed.

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