

**HD Construction & Infrastructure - What's News - 22 January 2014**

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**LP**

In the media

New home building spurs construction expansion

**TD**

The long-hoped-for recovery in Australia's **residential** construction sector may finally be underway, with low interest rates driving the fastest expansion in new home building since 2005 (08 January 2014). More...

QLD Schools PPP to deliver better value

Plenary Schools will deliver 10 new schools in South-East Queensland under a Public Private Partnership (PPP) (17 December 2013). More...

Brisbane Airport to redevelop international terminal

Local architects Richards and Spence, and Arkhefield have been chosen for the project. Work has commenced on the next important phase of the \$1.3 billion new parallel runway and more than 50 projects are underway in the broader airport precinct (09 January 2014). More...

Gold Coast International Marine Precinct approved

Harbour **Island's** proposed \$390 million Gold Coast International Marine Precinct has been approved by the Queensland Coordinator General subject to meeting environmental and operational conditions (09 January 2014). More...

Updated Australian standards released

Standards Australia has released a new version of AS 165 - 2013 Fixed platforms, walkways, stairways and ladders - design, construction and installation. The new standard will reduce ambiguity and offer guidelines for manufacturers, providing greater safety for those accessing these structures (09 January 2014). More...

Pacific Highway: Oxley Highway to Kundabung a Step Closer

Lend Lease has won the contract as the preferred tenderer to design and build the Oxley Highway to Kundabung upgrade of the Pacific Highway (08 January 2014). More...

Work starts on new section of Pacific Highway upgrade

Major work has started on the \$780 million 22 kilometre upgrade of the Pacific Highway from Nambucca Heads to Urunga. Works including utility relocations and the establishment of a **site** compound commenced late last year, with Lend Lease securing the contract to design and construct the upgrade (15 January 2014). More...

More time for BASIX submissions

They must have hit a nerve with the BASIX (Building Sustainability Index) Target Review with the New South Wales Government announcing an extension until 14 February for submissions on the proposed changes, due to the high level of interest from stakeholders (15 January 2014). More...

#### New homes and infrastructure for south-west Sydney

The housing boom in NSW is continuing with a further 3,200 new homes to be delivered in Sydney's south-west as part of the NSW Government's commitment to boost housing supply with the announcement of the rezoning of the Catherine Field **site** (28 December 2014). More...

#### Maules Creek Approval Upheld

Whitehaven Coal Limited has welcomed the judgment in the Federal Court of Australia that the Federal Minister for the Environment did not err in law in granting approval for Whitehaven's Maules Creek project in early 2013. Justice Cowdroy dismissed NICE's legal challenge to the validity of the Federal Minister's approval for the project granted under the EPBC Act and not a merits based appeal against the project (December 2013). More...

#### NSW roads maintenance funding at historic highs

Minister for Roads and Ports Duncan Gay today announced record levels of funding for roads and bridges maintenance in NSW, including council owned infrastructure. The record roads and bridges maintenance allocation in 2013-14 includes nearly \$432 million in Block Grants, REPAIR funding and forecasted natural disaster payments to councils (13 January 2014). More...

#### Infrastructure fund gets an added boost

The NSW Government's dedicated infrastructure fund, Restart NSW, has received a boost of nearly a quarter of a billion dollars, Treasurer Mike Baird announced. Almost a third of the proceeds of Restart are reserved for projects in regional NSW (2 January 2014). More...

#### Super Tribunal to start on 1 January 2014

Acting Minister for Justice announces that the NSW Civil and Administrative Tribunal (NCAT) will start on 1 January 2014. The government has integrated 22 of the State's tribunals and bodies into a new overarching tribunal that will provide a simple, quick and effective process for resolving disputes, supervising occupations and reviewing executive action (1 January 2014). More...

#### Victoria Scraps **Commercial** Building Defect Insurance

**Commercial** builders in Victoria will no longer need defects insurance under new rules which will also see the scrapping a requirement for metal roofs to be constructed by plumbers and will increase height thresholds above which walls can be constructed near **property** boundaries without permits (16 January 2014). More...

#### Victorian Government announces reforms for Building and Construction

The Victorian Coalition Government has announced 36 red tape cutting reforms to boost productivity and reduce costs for Victorian businesses. Of the 36 reforms roof plumbing, building complaints, wall height, builders' defects in **commercial** buildings, wall setback, testing of geosynthetic products, caravan annex construction and building permit signing reforms have relevance to builders and plumbers (8 January 2014). More...

#### Works start on \$49m South East road upgrade

Works have started on the \$49 million Narre Warren-Cranbourne Road upgrade to reduce congestion along one of south-east Melbourne's most important travel corridors, Minister for Roads Terry Mulder announced today (07 January 2014). More...

#### Avalon Airport Rail Link reaches environmental planning milestone

The Avalon Airport Rail Link has now reached the formal environmental planning stage, Minister for Public Transport Terry Mulder said today (4 January 2014). More...

#### Published - articles, papers, reports

#### Building Activity, Australia, Sep 2013

Author: Australian Bureau of Statistics

The trend estimate of the value of total building work done rose 0.9 percent in the September 2013 quarter. The seasonally adjusted estimate of the value of total building work done rose 1.6 per cent to \$21,124.3m, trend estimate of the value of new **residential** building work done rose 0.4% , value of work done on new

houses fell 1.7 per cent, while new other **residential** building rose 3.7 per cent. The trend estimate of the value of non-**residential** building work done rose 1.5 per cent (16 January 2014). More...

Stranded down under? Environment-related factors changing **China**'s demand for coal and what this means for Australian coal assets

Author: Ben Caldecott, James Tilbury, Yuge Ma

Smith School of Enterprise and the Environment: 16 December 2013

The report looks at how **China**'s changing demand for coal could impact coal-related assets in Australia, which is a large and growing coal exporter to **China**. More...

State of Play Report 2013: Australia's Key Economic Infrastructure Sectors

Author: Infrastructure Australia

This paper discusses Australia's key economic infrastructure sectors. It provides some insight into the level of confidence that the nationally significant infrastructure within the energy, transport, communications and water sectors is meeting the needs of Australian industry, households and individuals (19 January 2014). More...

Urban Transport Strategy 2013

Author: Infrastructure Australia

In conjunction with national infrastructure audits, such a strategy would aim to improve proposals for inclusion on the national infrastructure priority list. However, it would not merely deal with projects. This paper raises some issues regarding such a strategy and offers suggestions as to key principles (December 2013). More...

In practice and courts

NCC 2014 - an overview

This overview contains a snapshot of some important changes contained in NCC 2014. A List of NCC 2014 amendments will also be made available via the ABCB website early this year. More...

Infrastructure Australia: submission to the Productivity Commission Inquiry into Public Infrastructure

In structuring this submission to provide the Commission with comments that will usefully assist it in fulfilling the inquiry's Terms of Reference this submission considers: Infrastructure funding and financing; Long-term planning and project selection; The cost of infrastructure projects. More...

NSW: BPB Report on Building Certification and Regulation -Public Comment Sought

The Building Professionals **Board** (BPB) is seeking public comment on a building certification and regulation report which has just been publicly released. Submissions close on Monday 24 March 2014. More...

NSW: BASIX Target review - extension to exhibition period

The NSW Government is proposing changes to the BASIX targets to reflect trends in construction design and new technology innovation and align more closely with the national building standards contained in the Building Code of Australia. The proposed changes to BASIX will now be on exhibition from 13 December 2013 until 14 February 2014 (January 2014). More...

NSW: Commencement of NCAT

The NSW Civil and Administrative Tribunal (NCAT), which consolidates 22 of the state's tribunals and bodies, commenced on 1 January 2014. Applications lodged with a tribunal prior to 1 January 2014, and which have not yet been heard, will not need to be re-lodged. More...

Cases

Director of the Fair Work Building Industry Inspectorate v McDonald [2013] FCA 1431

INDUSTRIAL LAW - admitted contraventions of s 38 Building and Construction Industry Improvement Act 2005 (Cth) - statement of agreed facts - appropriate penalties to be imposed - factors to consider. Building

and Construction Industry Improvement Act 2005 (Cth) s 4, 4(1), s 5, s 36(1), s 36(1)(d), s 37, s 38, s 48(2), s 49, s 49(2)(a), s 69, s 69(1), s 69(1)(b), s 69(1)(c)(iii), s 69(3)(b). More...

Mine Subsidence **Board** v Jemena Ltd and Jemena Gas Networks (NSW) Ltd [2013] NSWCA 465

ENERGY AND RESOURCES - mining - interpretation of Mine Subsidence Compensation Act 1961, ss 12A(1)(b), 15(5)(b) - respondents claim compensation from Mine Subsidence Compensation Fund under s 12A(1)(b) for expense incurred to prevent or mitigate damage to pipeline from subsidence - pipeline erected in "mine subsidence district" without approval in contravention of Act - s 15(5)(b) provides that "no claim shall be entertained or payment made" by the **Board** "in respect of damage caused by subsidence" to unapproved improvements unless certificate issued by **Board** - whether claim under s 12A(1)(b) a claim "in respect of damage caused by subsidence". More...

J & D Rigging Pty Ltd v Agripower Australia Ltd & Ors [2013] QCA 406

CONTRACTS - BUILDING, ENGINEERING AND RELATED CONTRACTS - REMUNERATION - STATUTORY REGULATION OF ENTITLEMENT TO AND RECOVERY OF PROGRESS PAYMENTS - ADJUDICATION OF PAYMENT CLAIMS - where the first respondent **purchased** mining plant and equipment which was affixed to land subject to a mining lease - where the first respondent engaged the appellant to dismantle and remove the plant - where the first respondent did not pay the appellant after being served with a payment claim - where the appellant was successful at adjudication - where the primary judge found that the dismantling of the plant was not "construction work" under a "construction contract" within the meaning of s 10 of the Building and Construction Industry Payments Act 2004 (Qld) and consequently the adjudication decision was void for want of jurisdiction - where the primary judge found that "land" does not include mining leases and the plant did not "form part of land" within the meaning of s 10 - whether the phrase "forming, or to form, part of land" in s 10 imports the common law doctrine of fixtures. More...

BM Alliance Coal Operations Pty Ltd v BGC Contracting Pty Ltd & Ors [2013] QCA 394

CONTRACTS - BUILDING, ENGINEERING AND RELATED CONTRACTS - REMUNERATION - STATUTORY REGULATION OF ENTITLEMENT TO AND RECOVERY OF PROGRESS PAYMENTS - ADJUDICATION OF PAYMENT CLAIMS - where the appellant (BMA) entered into a contract with the first respondent (BGC) for the construction of a dam - where BGC served a payment claim on BMA pursuant to the Building and Construction Industry Payments Act 2004 (Qld) (the Act) which included claims for alleged latent conditions and termination costs - where the payment claim was referred to adjudication and BGC was awarded a progress payment which included sums on account of latent conditions and termination costs - where BMA sought a declaration that the adjudication decision was void as a result of three jurisdictional errors - where the primary judge held that the adjudicator had made a jurisdictional error in the determination of the termination costs claim - where, on 13 November 2012, the primary judge declared the decision of the adjudicator void - where, on 22 March 2013, the primary judge revoked the declaration and dismissed BMA's application upon BGC undertaking to repay to BMA the portion of the adjudicated amount affected by jurisdictional error - where BMA submits that the primary judge's conclusion that a decision affected by jurisdictional error was not necessarily invalid for all purposes and has some residual effect was an error of law - whether the primary judge erred in finding that the adjudication decision, which he held to be affected by jurisdictional error, retained effect until he exercised his discretion to grant a declaration or make an order quashing or setting aside the decision - whether the primary judge erred in law in withholding the relief sought by BMA - whether the matter should be remitted to the adjudicator for determination according to law. CONTRACTS - BUILDING, ENGINEERING AND RELATED CONTRACTS - REMUNERATION - STATUTORY REGULATION OF ENTITLEMENT TO AND RECOVERY OF PROGRESS PAYMENTS - ADJUDICATION OF PAYMENT CLAIMS - where cl 26.3(b) of the contract requires BGC to give written notice to BMA of the encountering of latent conditions - where, within 10 business days of notification, the parties must "negotiate in good faith any changes to the Price and/or time for completion of the Services as a result of Latent Conditions" and, in the absence of agreement, must refer the matter to an independent expert for determination - where the primary judge held that cl 26.3 was predicated on the existence of latent conditions and any dispute as to their existence was to be resolved by the general dispute resolution provision, cl 37 - where, contrary to BMA's contentions, the primary judge held that the fact that the machinery for assessment of value under the clause had not been advanced did not alter BGC's entitlement under the contract to be paid in respect of a latent condition - where the primary judge held that the award by the adjudicator in respect of latent conditions did not constitute a jurisdictional error - where BMA contends that cl 26.3 was intended to deal with all aspects of a dispute concerning latent conditions, including the determination of the existence of a latent condition - whether cl 26.3 operates subject to the determination of the existence of latent conditions under cl 37 - whether the adjudicator committed a jurisdictional error in awarding BGC a progress payment which included a sum in respect of latent conditions

INTEREST - RATE OF INTEREST AND COMPOUND INTEREST - RATE IN OTHER CASES - where BMA sought interest on the sums repayable to it at the rate prescribed in practice directions for default judgments - where the primary judge accepted BGC's contentions that the appropriate rate was that payable on term deposits with financial institutions - where BGC's evidence of **commercial** rates of interest awarded on investments was uncontested - whether the primary judge erred in accepting and acting on evidence of **commercial** interest rates when awarding interest on the sum repayable to BMA. More...

Heavy Plant Leasing Pty Ltd v McConnell Dowell Constructors (Aust) Pty Ltd & Ors [2013] QCA 386

CONTRACTS - BUILDING, ENGINEERING AND RELATED CONTRACTS - REMUNERATION - STATUTORY REGULATION OF ENTITLEMENT TO AND RECOVERY OF PROGRESS PAYMENTS - ADJUDICATION OF PAYMENT CLAIMS - where the first respondent was a sub-contractor for the provision of earthworks and the appellant was a sub-contractor to the first respondent - where the first respondent sent two documents, dated 6 and 8 March, to the appellant in response to the appellant's payment claim - where, despite failing to provide a statement as to why the scheduled amount [was] less? in respect of variations?, there was no suggestion in the 6 March document that it was provisional - where the adjudicator concluded that the 6 March document was the payment schedule for the purposes of the adjudication and disregarded the 8 March document - where the primary judge found that there was no proper basis for the adjudicator to find that the 6 March document constituted a payment schedule and that, in refusing to consider the contents of the 8 March document, the adjudicator committed a jurisdictional error - where the appellant contends that the 6 March document constituted a payment schedule as it met the requirements of s 18 of the Building and Construction Industry Payments Act 2004 (Qld) (the Act) - where the appellant submits that it was irrelevant that the 6 March document was not described internally as a payment schedule? and that the subsequent provision of more detailed reasons did not invalidate the 6 March document as a payment schedule - where the appellant contends that the primary judge erred in considering all of the circumstances of the case?, including the content of the 8 March document and the first respondent's subjective intention, in determining whether the 6 March document was a payment schedule - whether the primary judge erred in failing to analyse whether the 6 March document was a payment schedule? by reference to the statutory requirements in s 18 of the Act and not otherwise - whether the primary judge erred in considering the subjective intention of the first respondent and whether the 6 March document purported? to be a payment schedule - whether the primary judge erred in finding that the 6 March document was not a payment schedule for the purposes of the Act - whether any deficiency in the 6 March document was remedied by incorporating parts of the 8 March document - whether, if the 6 March document did not constitute a valid payment schedule, the adjudicator committed a jurisdictional error rendering his determination ineffective - whether the matter should be remitted to the adjudicator for determination according to law. CONTRACTS - BUILDING, ENGINEERING AND RELATED CONTRACTS - REMUNERATION - STATUTORY REGULATION OF ENTITLEMENT TO AND RECOVERY OF PROGRESS PAYMENTS - SUBCONTRACTORS' CHARGES ACT (QLD) - where the appellant served the first respondent with three notices of claim of charge - where the first respondent demanded that the notices be withdrawn on the basis of non-compliance with the Subcontractors' Charges Act 1974 (Qld) (the Charges Act) - where the appellant wrote to the first respondent on 20 February 2013 accepting that its notices of claim of charge were invalid and of no effect - where the letter of 20 February 2013 was not in the approved Form 5 - where the primary judge found that the failure to give notice of withdrawal of a notice of claim of charge in the approved form did not render a clear and unequivocal statement that a notice of claim of charge was invalid ineffective - where the primary judge held that, if a notice in the approved form was a necessary prerequisite to withdrawal, there had been sufficient compliance with s 11(8) of the Charges Act - where the first respondent submits that the failure to use Form 5 meant that there could not have been substantial compliance with s 11(8) of the Charges Act - where the first respondent contends that the adjudication decision was void as, at the time the payment claim was served by the appellant, there was a valid and subsisting charge pursuant to the Charges Act and s 4 of the Act prohibits the service of a payment claim in such circumstances - whether the letter of 20 February constituted an effective withdrawal of the notices of claim of charge. More...

Gratrax Pty Ltd v D & C Pty Ltd [2013] QCA 385

TORTS - NEGLIGENCE - ESSENTIALS OF ACTION FOR NEGLIGENCE - DAMAGE - CAUSATION - GENERALLY - where the appellant retained the respondent to design a road - where the respondent's design specified the wrong class of materials to be used in connection with the construction of the road - where the trial judge found the respondent failed to exercise proper care and skill - where the appellant was required to undertake testing and approval of the material and pavement prior to commencing work - where the appellant proceeded to lay the pavement without obtaining the appropriate testing, inspection and approval - where the trial judge concluded that the factual causation test in s 11(1)(a) of the Civil Liability Act 2003 (Qld) (=the Act') was satisfied but that the appellant's actions in prematurely laying the pavement meant that the scope of liability test in s 11(1)(b) of the Act was not satisfied - where the respondent was found to be liable only for the additional costs the appellant would have sustained as a result of the respondent's negligence if it had not prematurely commenced construction - whether the trial judge erred in



approaching the question of causation - whether the appellant's intervening act or decision was a more immediate cause of its loss than the respondent's breach. TORTS - NEGLIGENCE - CONTRIBUTORY NEGLIGENCE - GENERALLY - where, although it was not necessary to make such a finding, the trial judge found that the appellant failed to take reasonable care in prematurely commencing work - where the trial judge did not otherwise make any apportionment to account for the appellant's contributory negligence - whether the trial judge erred in failing to carry out the assessment of damages to take account of the appellant's contributory negligence. More..

Butler & Ors v The State of Queensland [2013] QSC 354

TORTS - STATUTES, REGULATIONS, ETC - APPLICABILITY AND EFFECT IN ACTIONS FOR NEGLIGENCE - GENERALLY - where a subsidence event occurred in 2008 in Collingwood **Park**, an area within the confines of a mining lease granted in 1967 - where the plaintiffs claim damages for loss arising from breaches of duty in the granting of a mining lease and the supervision and monitoring of mining work undertaken - where the relevant statutory regime provided for the grant of approval to mine and power to impose special conditions with the responsibility to monitor and supervise compliance - where it was found the 2008 subsidence event was materially contributed to by the size and shape of the pillars and the higher extraction ratio - whether the defendant owed the plaintiffs a duty of care in the grant of the mining lease, and for the imposing of conditions on the grant, and the monitoring, supervision and enforcement of compliance. TORTS - ESSENTIALS OF ACTION FOR NEGLIGENCE - DUTY OF CARE - IN GENERAL - where the plaintiffs claim the defendant owed a separate duty of care in responding to an earlier subsidence event in 1988 to obviate or minimise the risk of injury - where there was no allegation the defendant was in breach of a duty of care in relation to that subsidence event - whether the defendant owed the plaintiffs a duty of care to take remedial steps. TORTS - ESSENTIALS OF ACTION FOR NEGLIGENCE - DAMAGE - GENERAL - where the plaintiffs claim the defendants conduct in failing to monitor, supervise and enforce compliance with the mining lease was a breach of its duty of care and caused or materially contributed to the plaintiffs' loss and damage - where the question is whether there was any diminution in market value, and was any such diminution caused by the subsidence - where the valuation experts disagreed as to the correct methodology for an assessment of damage - whether the plaintiffs established on the balance of probabilities the defendant's breach caused or materially contributed to each plaintiff's loss and damage. More...

Faulks v New World Constructions Pty Ltd [2013] QCAT 658

Failure to complete a stage in construction — Works wrongly suspended — Application for relief from payment of stage because of defective and incomplete work and claim for general damages for distress, inconvenience and discomfort — Contract terminated as Respondent's QBSA licence suspended — Entire contract — Counter application for payment of stage — Availability of recovery on quantum meruit — Whether the claim for general damages by innocent party enlivens claim by defaulting party for recovery on quantum meruit. Chalet Homes Pty Ltd v Kelly [1978] Qd R 389 Robinson v Harman [1848] Eng R 135 Bellgrove v Eldridge (1954) 90 CLR 613 Nguyen v Luxury Design Homes Pty Ltd [2004] NSWCA 178 Cordon Investments Pty Ltd v Lesdor Properties Pty Ltd [2012] NSWCA 184 Falko v Jones McKewen & Co. Pty Ltd [1977] BR 447 Coshott v Fewings Joinery Pty Ltd BC 960 2970 NSWCA 15 July 1996 (unreported) Baltic Shipping **Company** v Dillon (1993) 176 CLR 344 Hutchinson v Harris (1978) 10 BLR 24, 37-238 Batty v Metropolitan Realisations Ltd (CA) (1978) 1 QB 554 Burke v Lunn [1976] VR 268 Bonchristiano v Lohmann [1998] 4 VR 82. More...

Andara Homes Pty Ltd v Matish Pty Ltd; Andara Homes Pty Ltd v Magistrates Court of the Australian Capital Territory and Matish Pty Ltd [2013] ACTSC 265

BUILDING AND CONSTRUCTION - adjudication under the Building and Construction Industry (Security of Payment) Act 2009 (ACT) - order in the nature of certiorari sought -jurisdictional error - alleged that mandatory procedures set out in the Act were not complied with -Building and Construction Industry (Security of Payment) Act 2009, s 22. CORPORATIONS - statutory demand - offsetting claim - whether genuine - demand set aside - no issue of principle - Building and Construction Industry (Security of Payment) Act 2009 (ACT) ss 22, 23, 28; Corporations Act 2001 (Cth) s 459G. More...

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