

REAL ESTATE MATTERS

October 2014

Good News For Builders and Construction Contractors!

The High Court of Australia has this month held that no duty of care is owed by a builder to avoid a subsequent purchaser's pure economic loss resulting from latent defects in common property in an apartment building.

Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 [2014] HCA 36

The case concerned a mixed-use apartment complex built by Brookfield Multiplex under a "design and construct contract". Apartments in the complex were sold to individual purchasers (which were then leased to a serviced apartment operator) and an Owners' Corporation was established.

The Owners' Corporation subsequently sued Brookfield for the cost of rectifying alleged latent defects in the common property.

The High Court's Decision

The High Court unanimously held that no duty of care was owed by Brookfield, given that the Owners' Corporation was not "vulnerable" to suffering economic loss from latent defects. In reaching this conclusion, the Court relied on the parties' contractual rights and obligations, specifically stating that the parties were commercial parties capable of allocating risk and protecting themselves in the contracts they enter into:

"The common law has not developed with a view to altering the allocation of economic risks between parties to a contract by supplementing or supplanting the terms of the contract by duties imposed by the law of tort."

What Does This Mean For You?

The case is good news for builders, developers and contractors who can confidently stand behind the allocation of risk specifically negotiated in their contracts, rather than as separately determined by the court.

Please contact our team for more information regarding the preparation of appropriate contracts for property construction and development.

What's Happening in Perth?

Cranes litter the skyline, commuters barely notice scaffolding at transit hubs and large trenches of sand go unnoticed. While this not may faze Perth locals, if you are a visitor to Perth you are likely to be asking yourself, "what is happening in this city?"

A number of projects are underway in Perth, representing an exciting opportunity for development and improvement in the capital of Western Australia.

Elizabeth Quay

The Elizabeth Quay project will change the face of the Perth foreshore by reconnecting the Swan River with the Central Business District. Ten hectares of land will be redeveloped between Barrack and William streets, including a 2.7 hectare inlet. The development will incorporate civic, commercial, residential, retail and cultural attractions with 60% of the project expected to be publicly accessible. Expressions of interest for food and beverage outlets are now open.

Perth City Link

The Perth City link will sink the Fremantle rail line from Perth Station to King Street and place the Wellington Street bus station underground. This sinking of public transport infrastructure will create a key pedestrian link between Northbridge, the city centre and the foreshore. It is expected that this will encourage connectivity and movement from the Perth Central Business District to the Northbridge cultural hub.

As part of this project, existing WA Government land holdings will be redeveloped and improved. Currently, expressions of interest are being sought from experienced developers for a hotel and mixed-use development opportunity.

East Perth Power Station

The Metropolitan Redevelopment Authority's vision for the East Perth Power Station project is to transform the former industrial site into a vibrant waterfront destination and community with a mix of living, working and leisure opportunities.

Currently, Master Planning is being undertaken to establish a framework for the future use for the land. The design framework will aim to focus on the site's special characteristics and heritage, while developing a sustainable mix of living, working and recreational activities including a variety of public open spaces. We are watching this space.



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E-Conveyancing Roll-out Continues

The roll-out of e-conveyancing has been continuing across Australia. In Western Australia, Victoria and New South Wales, transactions with the major banks such as mortgages, discharges and refinances can now be conducted using e-conveyancing. This is facilitated by Property Exchange Australia, or PEXA, which works alongside the state land titles offices to administer online settlements.

In 2015, full functionality for e-conveyancing will be introduced to Western Australia, so that property lawyers and conveyancers can conduct transfers of land, caveats and withdrawals of caveats online. The roll-out in other states will be completed in the last quarter of 2014 and 2015.

Once the roll-out is complete, it is expected that a number of property settlements will be conducted online. However, the e-conveyancing system is not intended to replace the existing paper system but work alongside it. Parties will have the option to use an online or manual settlement, depending on the circumstances. It is expected that the functionality of e-conveyancing will be increased over time.



One-Stop-Shop For Environmental Approvals Hits a Road Block in the Senate

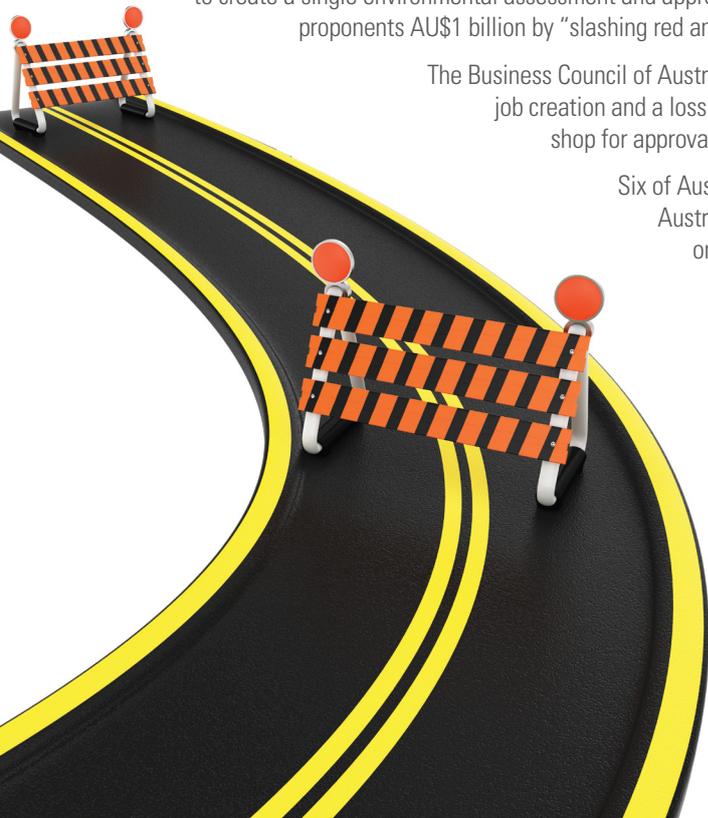
The Australian Government's plans to introduce a one-stop-shop for environmental approvals has stalled after the Australian Greens secured an agreement with the Palmer United Party (PUP) to block the Bill, which would amend the Environmental Protection Biodiversity and Conservation Act 1999 (Cth) (EPBC), from passing through the Senate.

The reforms aim to reduce duplication and regulatory burden by accrediting state and territory planning systems under national environmental law to create a single environmental assessment and approval process for nationally protected matters. The reforms were expected to save proponents AU\$1 billion by "slashing red and green tape".

The Business Council of Australia has described the deal as a "backward step for Australia's competitiveness and job creation and a loss for the environment and the economy". CEO Jennifer Westacott says the one-stop-shop for approvals was recognised by all governments as "the right way to go".

Six of Australia's leading business groups, including UDIA and the Property Council of Australia, are calling on the Senate to reconsider their position and pass the critical one-stop-shop reforms as soon as possible. In a joint statement released on 2 October 2014, the business groups stated that "if the Senate fails to pass the one-stop-shop reforms, it will be hindering the competitiveness of Australian businesses, lowering national output, and ultimately reducing the living standards of all Australians".

We are awaiting further information on whether the PUP will reconsider their opposition and we will endeavour to keep you informed.



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Meet the Team



Gemma Ellis

Practice areas: Real estate, hospitality and liquor licensing

What do you enjoy about working in real estate?

I enjoy the tangible nature of the work and being a part of the development in Perth. Working in hospitality and liquor licensing gives me the inside knowledge on new places to visit after work on a Friday night. I also enjoy working with our consultants as it allows me to consider issues in different ways. For example Creating Communities, which coordinates any community consultation work we need in liquor licensing and planning, provides a different perspective when we are faced with challenging applications.

What is the biggest challenge you have had to face so far?

I would have to say that my biggest challenge so far was arranging for the transfer of two properties out of the names of two de-registered companies. The whole process took months and involved lots of calls to ASIC, Landgate and the liquidators. It was so satisfying when we finally managed to satisfy all the red tape requirements and have the properties transferred to their new owners.

What do you do to unwind?

I try to go to yoga at least once a week in my lunch break or after work, and I always make time to catch up with my friends and family. I always try to have something to look forward to every weekend. I am also an avid traveller and have just returned from a month in Europe.

Favourite place in the world?

New York. Hands down.



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