

# Real Estate and The Law

## Welcome to ...

*... the final edition of Real Estate and the Law for 2008. Despite the approach of Christmas, there are many newsworthy stories affecting the property sector, and this Update includes some of the more interesting items you need to be aware of. Please call the nominated contact persons if you need further information and/or advice in relation to the items below.*

*Seasons Greetings from all at Rigby Cooke Lawyers.*

## Victorian Coastal Strategy 2008

Environment Minister Gavin Jennings and Planning Minister Justin Madden released the *Victorian Coastal Strategy 2008* last week.

This is the third version of the Strategy, which aims to set a long term vision for the coast and provides policies and actions to guide decisions about its management over the next five years.

### What's new?

Most significantly, the Strategy responds to the issue of climate change but also responds to the issues of population growth in coastal areas and the health of the marine environment.

Specifically, the Strategy sets the policy basis for planning for sea level rise of not less than 0.8 metres by 2100. The Strategy states the policy should be implemented until "national benchmarks for coastal vulnerability are established".

Planning decisions concerning coastal land will need to be made in accordance with the new Strategy. This may result in greater setbacks, higher floor levels and more onerous drainage works being required for new proposals.

The Strategy contemplates the development of a new coastal tender program similar to the 'BushBroker' scheme. This scheme can be

used by developers to offset any native vegetation loss that arises as a result of the development and use of land.

The Strategy will most definitely have implications for property developers whose activities impact coastal areas and the marine environment – for example, a marina development.

Our Planning & Environment Team can assist you in navigating your way through this new Victorian Government policy direction. For further information, contact Scott Stewart on 03 9321 7816 [sstewart@rigbycooke.com.au](mailto:sstewart@rigbycooke.com.au) or Jo Robinson on 03 9321 7893, [jrobinson@rigbycooke.com.au](mailto:jrobinson@rigbycooke.com.au)

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# Disclosure requirements

Balancing what a buyer must be told about a property against the information a seller must disclose has been the subject of many court battles. In Victoria, intending buyers must be given a Vendor's Statement containing all the information required by Section 32 of the Sale of Land Act.

This can be straightforward and after many years of interpretation, generally does not cause a problem for a seller.

However, there is one requirement of Section 32 that can present problems.

A seller must give "particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal affecting the land ... of which the Vendor might reasonably be expected to have knowledge".

A problem can arise for a seller when a proposal is put forward – not for the property being sold – but for a neighbouring property.

Suppose a person about to sell his home becomes aware of a proposal for a fast food outlet, an aged care facility, or construction of a building on a neighbouring property which will block valuable views. Should this be disclosed in the Vendor's Statement? It is not something which relates directly to the land being sold in a legal sense, but of course in reality there will be an immediate effect on the enjoyment of the property.

In a recent case, it was held that an application for a planning proposal to operate a child minding centre next to the seller's property (which was lodged after the auction

of the seller's property), was not a matter which had to be disclosed by the seller, even though the seller was aware of the proposal before the auction. The generally accepted view at this time is that matters affecting neighbouring properties are not matters which must be disclosed in a Vendor's Statement.

However, a seller must be careful not to give a false impression of his property by misleading advertising or misleading responses to buyer's questions. If a buyer is given misleading information then there could be a case made out by the buyer for damages or cancellation of the contract

Whilst the old maxim of "let the buyer beware" still holds, a seller must not give or withhold information in response to specific questions which would have the effect of misleading the purchaser. It is fair to say that a full disclosure of all information is the safest option even though, at times, this may be unpalatable.

For further information, contact Peter Byrne on 03 9321 7825, [pbyrne@rigbycooke.com.au](mailto:pbyrne@rigbycooke.com.au)

# First Home Owner Boost benefits

## Established homes

First home buyers purchasing an established home may be eligible for the \$7,000 Boost, in addition to the First Home Owner Grant of \$7,000 and the First Home Bonus of \$3,000, bringing total available benefits to \$17,000.

## New homes

First home buyers building a new home or purchasing a newly constructed home may be eligible for the \$14,000 Boost, in addition to the First Home Owner Grant (\$7,000), the First Home Bonus (\$5,000) and the First Home Owner Regional Bonus (\$3,000), bringing the total benefits to \$29,000.

## Eligibility criteria

To be eligible to receive the Boost, first home buyers must satisfy the usual requirements of the existing First Home Owner Grant and the additional Boost requirements.

Further information from Narelle Kervin, 03 9321 7827, [nkervin@rigbycooke.com.au](mailto:nkervin@rigbycooke.com.au)

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