

News

August 2005

Property and Construction Newsletter

Vendor Duty

Vendor duty on contracts for land related property has been abolished from 2 August 2005. This applies to all contracts entered into (ie exchanged) on or after 2 August 2005. At this stage no further details are available – in particular it is uncertain how contracts exchanged on or after 2 August 2005 pursuant to options granted before 2 August 2005 will be treated.

Anti-avoidance provisions will be introduced to prevent persons avoiding vendor duty by cancelling contracts that were exchanged before 2 August 2005. For example, where liable contracts were exchanged before 2 August 2005, the duty will still apply even if these contracts are rescinded and a substitute contract is exchanged on or after 2 August 2005.

Disposal duty (land rich vendor duty) also ceased to apply to a disposal of an interest in a landholder on or after 2 August 2005.

Appointment of Richard d'Apice to Heritage Council Committee



We are proud to announce that our senior partner, Richard d'Apice AM, has been appointed as a member of the History Advisory Panel of the Heritage Council of New South Wales.

This appointment recognises his significant experience in heritage issues and local history together with his extensive property law experience.

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Recent Developments in Home Warranty Insurance

There have been numerous developments in the Home Warranty Insurance Scheme over the past two years that have significant implications for both vendors and purchasers. Some of the more important changes include the following:

- On 31 December 2003, the *Home Building Amendment (Insurance Exemptions) Regulation 2003* commenced. As from that date, Home Warranty Insurance is no longer required for a “multi-storey building” being a building of more than three stories and containing two or more dwellings.

Where contracts for the sale of a multi storey building have been entered into before 31 December 2003, and the vendor has complied with the requirement to disclose information on Home Warranty Insurance, but work is not commenced until after 31 December 2003, the vendor is required to notify the purchaser in writing that:

- the work is now exempt from Home Warranty Insurance; and
- the provisions of the contract relating to that insurance no longer apply.

- A new regime for licensing building consultants commenced on 1 January 2004 pursuant to the *Home Building Amendment (Building Consultancy Work) Regulation 2003*. Under the new regime, all building consultants carrying out building consultancy work are required to be licensed.

Building consultants must now enter into written contracts, provide a consumer brochure and a signed copy of the contract to the other party before carrying out building consultancy work. These provisions will not apply:

- where the inspection is required to be carried out within two working days of the contract being entered into; and
- where the contract is between a building consultant and a solicitor on behalf of a purchaser.

These exceptions obviously limit the effectiveness of the new licensing regime as the above two situations commonly occur when building reports are being urgently obtained before exchange of contracts.

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- On 1 September 2004, *The Home Building Regulation 2004* commenced which replaced the *Home Building Regulation 1997*. The new regulation makes a number of important amendments to the existing regulations including:
 - The threshold for residential building work exempted from licensing under the *Home Building Act* is increased from \$200 to \$1000. This new threshold is inclusive of labour and materials.
 - Building work will now be exempted where:
 - The person doing the work owns the dwelling;
 - The work does not involve specialist work (such as plumbing, gas fitting, electrical and air conditioning work);
 - A development consent is not required for the work; and
 - The value of labour and materials does not exceed \$5000.

GST Changes

The Federal Government has enacted the Tax Laws Amendment (2005 Measures No. 2) Act 2005.

This Act tightens up the operation of the margin scheme so as to prevent its potential abuse.

In particular, there are a number of amendments directed at preventing transactions within GST groups being implemented to either restore eligibility to the margin scheme or to limit the GST liability under the margin scheme.

Effectively, all intra-group supplies and acquisitions are ignored in determining if the margin scheme can be applied on a taxable supply of real estate by a group member.

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New Stamp Duty Payable on Put and Call Options

Recent amendments to the New South Wales *Duties Act* provide that the assignment by a potential purchaser of its rights under a put and call option will be liable to duty as if it were a sale of the underlying option property. The person liable to pay the duty is the assignor of the option.

The dutiable value of the property subject to this duty is taken to be the greater of:

- (a) the consideration for the assignment of the option and the consideration payable if it is exercised; and
- (b) the unencumbered value of the property, which is subject to the option.

In a number of put and call options, the holder of the option has the right to nominate a different purchaser. In many circumstances, that nomination will also attract this new duty.

Changes to the Development Contributions System in New South Wales

Recent amendments to the Environmental Planning & Assessment Act effectively mean that there will be three alternative ways for councils to obtain development contributions from applicants for development approvals or rezoning.

The traditional section 94 contributions will continue to be an option for councils. The contributions under section 94 will continue to be levied based on the assessment made by councils in their contributions plan of the likely increase in demand for public amenities and public services from new development.

As an alternative to section 94 levies, councils will now be able to impose a flat levy limited to 1% of the construction costs. These are likely to be used in low growth areas and where there is no need to provide a close connection between the proposed development and the impact on the community.

The third option available will be voluntary planning agreements. These are intended to provide a more flexible basis for providing community infrastructure. They have been in use informally for many years but the legislation now codifies the arrangement and provides statutory protection and obligations upon both the council and the developer under the voluntary planning agreements.

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Covenants on Land

Covenants over land, easements, rights of way and the like, can be a great burden to the owner of the burdened land and can be a great benefit to an the owner of benefited land. Equally, there are opportunities for the owners of burdened land and there are risks for the owners of benefited land.

The issue arises under section 28 of the *Environmental Planning and Assessment Act* which allows Council's to put a "Section 28 power" in their zoning instruments, and if they do, the covenant easement, right of way etc will not apply so as to restrict any development which may be carried out under the zoning instrument.

The effect of a Section 28 power in a zoning instrument can be to transfer very significant value from one property to another and it may potentially render a property incapable of development.

If your land is on a hillside and you sell the lower half of the land subject to a height covenant to preserve the view from the higher part of the land, the purchaser (if the zoning instrument permits it) could ignore the height covenant and obliterate your view. If the only access to a property is along a right of way, the owner of the right of way could (if the zoning instrument permits it) build over it and so obliterate the access.

There is a very clear potential for the Section 28 power to interfere with the relationship between joint venturers as it could allow either party to develop their land in any way which is consistent with the zoning instrument, even if that is inconsistent with the joint venture agreement.

Should any further information be required, please contact Mr Richard d'Apice or Mr Bill d'Apice of our office.

Disclaimer

This newsletter is a non-comprehensive general outline of the law as at 1 August 2005. You should not act upon or rely on any information contained in this newsletter without obtaining specific legal advice.

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