SUPREME COURT OF QUEENSLAND

CITATION:	*HM Australia Holdings Pty Ltd v Treton Pty Ltd* [2011] QCA 382
PARTIES:	**HM AUSTRALIA HOLDINGS PTY LTD** ACN 101 854 817 (appellant) **v** **TRETON PTY LTD** ACN 105 339 580 (respondent)
FILE NO/S:	Appeal No 3275 of 2011 Appeal No 3737 of 2011 SC No 11091 of 2009
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeals
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	23 December 2011
DELIVERED AT:	Brisbane
HEARING DATE:	8 August 2011
JUDGES:	Muir, Fraser and Chesterman JJA Separate reasons for judgment of each member of the Court, each concurring with the orders made
ORDERS:	**In Appeal No 3275 of 2011:** **1. Appeal dismissed with costs.** **In Appeal No 3737 of 2011:** **1. Appeal dismissed with costs.**
CATCHWORDS:	CONVEYANCING – STATUTORY OBLIGATIONS OR RESTRICTIONS RELATING TO CONTRACT FOR SALE – PROTECTION OF PURCHASERS – OBLIGATIONS ON VENDOR: DISCLOSURE, WARNINGS AND LIKE MATTERS – where the respondent contracted to sell two proposed allotments of land to the appellant – where the respondent provided a "disclosure plan" to the appellant pursuant to s 9(2) of the *Land Sales Act* 1984 (Qld) – where the disclosure plan included a single contour map displaying both natural and final surface contours – where the appellant argued that the disclosure plan was insufficient because s 9(2)(c) required the disclosure of two separate contour maps, the map did not pictorially or graphically depict the contour intervals but only contained sufficient information to enable the intervals to be deduced, and the map did not use "appropriate contour intervals" – where the appellant claimed

that it was entitled to avoid the contracts as a result of these defects – where the trial judge held the disclosure plan was sufficient and granted a decree of specific performance of each of the contracts and damages – where the appellant argued the trial judge erred in having regard to information external to the boundaries of the proposed allotment on the map – whether the disclosure plan was sufficient to comply with s 9(2) – whether the trial judge erred in considering information external to the boundaries of the proposed allotments

Land Sales Act 1984 (Qld), s 9(2)(c), s 9(7)

Deming No 456 Pty Ltd v Brisbane Unit Development Corporation Pty Ltd (1983) 155 CLR 129; [1983] HCA 44, cited
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355; [1998] HCA 28, considered
Treton Pty Ltd v HM Australia Holdings Pty Ltd & Anor [2011] QSC 38, affirmed

COUNSEL: A Crowe SC, with P D Hay, for the appellant
L F Kelly SC, with D B O'Sullivan, for the respondent

SOLICITORS: Cooper Grace Ward Lawyers for the appellant
McInnes Wilson Lawyers for the respondent

[1] **MUIR JA:** I agree with the reasons of Fraser JA and with the orders proposed.

[2] **FRASER JA:** The first respondent ("Treton") entered into separate contracts to sell proposed allotments "Lot 10" and "Lot 11" to the appellant ("HM Australia") for $1,572,120 and $1,296,000 respectively. There was no separate title for either proposed allotment. The contracts provided for completion 14 days from notice of the registration of a proposed plan of subdivision.

[3] HM Australia refused to settle the contracts. In each case, HM Australia claimed that it had duly avoided the contract because the disclosure plan given to it by Treton before the contract was made did not comply with s 9 of the *Land Sales Act* 1984 (Qld) ("the LSA"). Following a hearing in the Trial Division, the trial judge held that Treton had complied with that provision. His Honour granted Treton a decree of specific performance of each of the contracts and awarded damages against HM Australia.[1] Because Treton's claim against the second respondent was brought upon the premise that HM Australia might succeed in its contention that the contracts were validly terminated, that claim was dismissed.

[4] The sole issue in HM Australia's appeal is whether the trial judge was correct in holding that the disclosure plan which Treton gave HM Australia complied with the requirements of s 9(2)(c)(i) of the LSA.

The *Land Sales Act* 1984 (Qld)

[5] Section 9 of the LSA, in the form it was in when the contracts were made on 14 March 2008,[2] provided:

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1 *Treton Pty Ltd v HM Australia Holdings Pty Ltd & Anor* [2011] QSC 38.
2 Reprint 5A.

"(1) Before a purchaser enters upon a purchase of a proposed allotment, the vendor must give the purchaser—

(a) a disclosure plan and disclosure statement for the proposed allotment; or

(b) a copy of the plan of survey for the proposed allotment approved by the local government under the Planning Act, chapter 3, part 7.[3]

Maximum penalty—100 penalty units or 6 months imprisonment.

(2) The disclosure plan must include the following—

(a) a copy of any plan for reconfiguring a lot for the allotment forming part of a development permit mentioned in section 8(1)(a);

(b) the metes and bounds description of the proposed allotment;

(c) contour maps of the proposed allotment showing the following contours—

(i) natural surface contours, with appropriate contour intervals;

(ii) final surface contours as specified in the engineering drawings;

(d) fill levels, and areas to be filled, as specified in the engineering drawings for the proposed allotment.

(3) The disclosure statement must be signed by the purchaser and vendor and state the following—

(a) the purchaser's full name and address;

(b) the vendor's full name and address;

(c) that the vendor or vendor's agent has given the purchaser the disclosure plan for the proposed allotment;

(d) if a development permit mentioned in section 8(1)(a) is subject to conditions—the conditions;

(e) that the purchaser has—

(i) for an allotment capable of being staked by a cadastral surveyor—inspected the proposed allotment after it has been staked by the surveyor; or

(ii) for an allotment that is not capable of being staked by a cadastral surveyor—inspected the proposed allotment; or

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[3] *Integrated Planning Act 1997*, chapter 3 (Integrated development assessment system (IDAS)), part 7 (Plans of subdivision).

(iii) been given the opportunity, and declined, to do an inspection mentioned in subparagraph (i) or (ii);

(f) that the vendor must give the purchaser the registrable instrument of transfer for the allotment, together with the other documents mentioned in section l0A(3), not later than 18 months after the purchaser enters upon the purchase of the allotment;

(g) that if the vendor or vendor's agent contravenes this section, other than subsection (3)(a), (b) or (h), the purchaser may avoid the instrument relating to the sale by written notice given to the vendor or vendor's agent before the vendor gives the purchaser the registrable instrument of transfer for the allotment;

(h) the day the statement is signed.

(4) The obligation prescribed by subsection (1) or (3) rests upon the vendor's agent, where it is the agent who procures the signing of the instrument concerned by the purchaser or by the purchaser's agent, and otherwise rests upon the prospective vendor.

(5) If the vendor or the vendor's agent contravenes this section, other than subsection (3)(a), (b) or (h), the purchaser may avoid the instrument relating to the sale by written notice given to the vendor or vendor's agent before the vendor gives the purchaser the registrable instrument of transfer for the allotment.

(6) A stake placed by a cadastral surveyor under subsection 3(e)(i) is not a survey mark for the purposes of the *Survey and Mapping Infrastructure Act 2003*.

(7) In this section—

appropriate contour intervals means contour intervals of not more than the following—

(a) for a proposed allotment of not more than 2000m^2—500mm in height;

(b) for a proposed allotment of more than 2000m^2—the smallest of the following contour intervals—

(i) the contour intervals shown on a local government topographic map that includes the allotment;

(ii) the contour intervals shown on a topographic map that includes the allotment and is held in the department administered by the Minister administering the *Land Act 1994* or *Land Title Act 1994*."

The disclosure plan

[6] It was common ground that each contract was for the purchase of a "proposed allotment",[4] that there was no approved plan of survey in terms of s 9(1)(b), and that s 9(1)(a) therefore applied. Apart from the identification of the proposed allotments, there was no material difference between the plan for Lot 10 and the plan for Lot 11. The issue may therefore be considered with reference to the disclosure plan for Lot 10.

[7] A copy of that disclosure plan is annexed to these reasons. It was common ground that the map included in the disclosure plan showed the final surface contours (the unbroken lines described in the legend as "Finished Contours Surface") at appropriate contour intervals (half a metre), in compliance with s 9(2)(c)(ii). (The contour intervals of half a metre could be deduced by reference to the unbroken lines marked "66.0" and "67.0", with the single intervening contour, represented by the unbroken line with the lot number "10" marked in it, at a level of 66.5. The surveyors who gave evidence for each side agreed that this was a common practice.)

[8] The issue is whether the map showed "natural surface contours with appropriate contour intervals" in compliance with s 9(2)(c)(i). As to that, it was common ground that the text in the legend "Existing Contours" referred to "natural surface contours" within the meaning of s 9(2)(c)(i), and that the contour levels are printed in the same orientation as the lines. Thus:

(a) The number "67.0" within Lot 10 was referable to the unbroken line representing a final surface contour.

(b) The number "70.0" within Lot 10 was referable to the broken line representing a natural surface contour running in a generally north – south direction. That is the only natural surface contour marked with a level.

Contour "maps"

[9] HM Australia argued that the disclosure plan did not comply with s 9(2)(c) because it included only one contour map but the statutory provision required the disclosure plan to include one map showing natural surface contours and another map showing final surface contours. I would respectfully adopt the trial judge's reasons for rejecting the same submission:[5]

> "Section 9 requires a 'disclosure plan', rather than a series of plans. That plan must include the information specified in s 9(2). The requirement for information about contours is expressed as a requirement for 'maps', rather than a map. But that does not mean that the two maps could not be represented on the one page. Here, there are effectively two maps superimposed one on the other. If anything, that is likely to be more helpful than two pieces of paper. In my view, the use of one page containing the two maps was permitted by the section."

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4 "Proposed allotment" is defined in s 6 of the LSA to mean a parcel of land the boundaries of which are not shown on a plan registered under the *Land Act* 1994 (Qld) or (as is relevant in this case) the *Land Title Act* 1994 (Qld).

5 [2011] QSC 38 at [18].

Contour maps "showing" the natural surface contours

[10] In concluding that the disclosure plan did show the natural surface contours in conformity with s 9(2)(c)(i) of the LSA, the trial judge accepted the evidence given by a surveyor called by Treton, Mr Purcell, with whose methodology the surveyor called by HM Australia, Mr Barbaro, agreed. The trial judge reasoned as follows:[6]

> (a) The disclosure plan represented that the park immediately to the north of Lots 10 and 11 would not be the subject of the proposed earthworks mentioned on the plan, because:
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> (i) the final surface contours (the unbroken lines) extend beyond Lots 10 and 11 to land adjoining those proposed allotments to the east, south and west, yet the final surface contour lines do not extend beyond the northern boundaries of Lots 10 and 11 (or Lot 12, so far as it was shown); and
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> (ii) at many points on the boundary between the park and Lots 10 and 11, a final surface contour intersects with a natural surface contour, indicating that the surface of Lots 10 and 11 will be altered in a way that meets the natural surface of the park at the boundary; near the northern boundary of Lot 10, the finished landscape would rise sharply up to the park, and further to the south the landscape would be made flatter and lower.
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> (b) Because the finished surface of Lots 10 and 11 at the northern boundary would be at the same level as the natural surface at that boundary, the unmarked level of a natural surface contour could be ascertained if it intersected at that boundary with a finished surface contour which had a marked level.
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> (c) Thus:
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> (i) the natural surface contour line which intersected at the northern boundary of Lot 11 with the finished contour line marked "67.0" was at a level of 67.0;
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> (ii) the natural surface contour line which intersected at the northern boundary of Lot 10 with the finished contour line marked "68.0" was at a level of 68.0;
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> (iii) the natural surface contour line which intersected at the northern boundary of Lot 10 with the finished contour line marked "69.0" was at a level of 69.0; and
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> (iv) with reference to those levels (and the adjacent natural surface contour line which is marked "70.0"), the natural surface contour lines were shown at one metre intervals.

[11] The trial judge noted that the small size of the print made it relatively difficult to identify where the finished contour lines marked "69.0" and "68.0" intersected at the boundary with the natural surface contour lines, but the markings were

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6 [2011] QSC 38 at [22] - [26].

nevertheless apparent.[7] I found the print too small and the lines too close together to identify those two points of intersection with much confidence. As Mr Purcell pointed out in his evidence, however, it can readily be deduced from the clearly legible parts of the map that 69.0 and 68.0 are the levels of the two natural surface contour lines which are shown between the natural contour line marked "70.0" and the natural contour line 67.0 (which can readily be deduced by its intersection at the boundary with the finished surface contour marked "67.0").

[12] The trial judge concluded that Treton had proved that the disclosure plan "did provide information from which the levels and intervals of the natural surface contours can be deduced"; it did not matter that the information would not be immediately obvious to a lay person, because the question was whether the map "unambiguously disclosed that information, albeit that that would require a careful analysis by someone familiar with contour plans."[8]

[13] HM Australia did not challenge the logic of that methodology but it argued that the map did not fulfil the statutory obligation that it show the natural surface contours and intervals. HM Australia submitted that the word "showing" in s 9(2)(c) required a pictorial or graphic depiction of the natural surface contours which itself revealed the contour intervals, and the provision was not satisfied by a map which contained sufficient information to enable the contour intervals to be deduced from the information presented on the map.

[14] In *Project Blue Sky Inc v Australian Broadcasting Authority*,[9] McHugh, Gummow, Kirby and Hayne JJ said:

> "The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined 'by reference to the language of the instrument viewed as a whole'. In *Commissioner for Railways (NSW) v Agalianos*, Dixon CJ pointed out that 'the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed'. Thus, the process of construction must always begin by examining the context of the provision that is being construed.
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> However, the duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning."

[15] The word "showing" does not, in its ordinary meaning, necessarily convey the degree of specificity or obviousness for which HM Australia contended. One of the

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7 [2011] QSC 38 at [22].
8 [2011] QSC 38 at [25].
9 (1998) 194 CLR 355 at 381 [69], 384 [78]. Citations omitted.

dictionary meanings of the word "show" is "to indicate".[10] Furthermore, s 9(2)(c)(i) does not provide that the contour map showing the natural surface contours must include labels identifying each contour level. Rather, it requires only that the map show the contours with appropriate contour intervals. I do not regard the provision as being ambiguous in this respect, but any such ambiguity should be resolved against an implication that the map must expressly identify each contour level. The consequences of non-compliance with s 9(2) are very serious. Under s 9(5) a purchaser may avoid the instrument relating to the sale at any time up until the vendor gives the purchaser the registrable instrument of transfer for the allotment. Furthermore, a contravention of s 9(1), by, for example, not providing a compliant disclosure plan under s 9(2), is an offence punishable by a fine or six months imprisonment. Accordingly, "the prima facie construction of those parts of the section which impose obligations is that any real ambiguity persisting after the application of the ordinary rules of construction is to be resolved in favour of the most lenient construction".[11]

[16] HM Australia argued that the insufficiency of the disclosure plan was demonstrated by the fact that a surveyor, Mr Purcell, could not determine the value of each natural surface contour except by enlarging the contour map. That is incorrect. Mr Purcell's evidence (in his "Supplementary Report No 3" dated 28 November 2010) was that "one can readily determine the contour intervals for the natural surface contours on the disclosure plan by reference to the information on the plan itself." He did not need to enlarge the plans to identify the contour intervals, to identify the natural contour level marked "70.0", or to deduce the levels of the other natural contour lines. As I indicated in [11] of these reasons, the contour intervals and levels can be found without reference to the print which is difficult to read.

[17] In a particular case, the identification of contours and contour intervals by inference may be so complex or difficult as to defeat the apparent purpose of the section, but that is not the case here. In this respect, I should mention that HM Australia submitted that it was significant that the methodology adopted by the trial judge was not advanced by Treton's surveyor until he provided a supplementary report part way through the trial after junior counsel asked him to consider that methodology. Nevertheless, it is apparent that the process of "deduction" explained in [10] and [11] of these reasons is relatively simple.

[18] I conclude that the map did show the natural surface contours and the intervals in conformity with those aspects of s 9(2)(c)(i) of the LSA.

Information external to the map

[19] HM Australia argued that the trial judge erred by having regard to information other than information within the boundaries of the proposed allotment. The submission was that s 9(2)(c) required the relevant information to be found wholly within the lines depicted on the disclosure plan as representing the boundaries of the proposed allotment. The argument allowed an exception only for the "legend". With reference to the disclosure plan for Lot 10, for example, HM Australia argued that it was impermissible to rely upon information contained within the boundaries of

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10 See, for example, the definition of "show" in the *Macquarie Online Dictionary* and in Marr V et al (eds), *The Chambers Dictionary*, 11th ed, Chambers Harrap Publishers Ltd, London, 2008.

11 *Deming No 456 Pty Ltd v Brisbane Unit Development Corporation Pty Ltd* (1983) 155 CLR 129 at 145 per Mason, Deane and Dawson JJ, citing *Beckwith v The Queen* (1976) 135 CLR 569 at 576.

Lot 11 (including the point where the final surface contour line marked as "67.0" on Lot 10 intersected at the northern boundary of Lot 11 with a natural surface contour line) and that it was impermissible to have regard to the fact that the final surface contour lines extended beyond Lot 10 otherwise than into the park.

[20] The argument focussed upon the requirement in s 9(2)(c) that the maps "of the proposed allotment" must show the contours, but it does not follow from those words that it is impermissible to have reference to other material in the disclosure plan. Although the map itself is distinctly separate from the legend, HM Australia acknowledged that regard could be had to the legend because it describes the meaning of symbols on the map. Equally, in my opinion, it is permissible to have regard to marks associated with the lines extending into Lot 11, the continuation beyond the proposed allotment of the natural surface contour lines, and the discontinuation beyond the proposed allotment of the final surface contour lines. That is not to say that, for the purposes of s 9(2)(c) of the LSA, it would always be appropriate to construe a contour map by reference to information in a separate part of the disclosure plan, but the relevant information in this case is closely proximate to and inseparably connected with the relevant contour map.

"Appropriate contour intervals"

[21] HM Australia argued that the trial judge erred in holding that the one metre natural surface contour intervals which his Honour found were shown on the contour map were "appropriate contour intervals". That term is defined in s 9(7). Because the areas of Lots 10 and 11 exceeded 2,000 square metres (Lot 10 had an area of 5,700 square metres and Lot 11 had an area of 2,267 square metres) it is paragraph (b) of s 9(7) which is relevant. The relevant subparagraph is (i). The trial judge described the issue in this respect as being "whether one metre was the smallest interval shown upon the electronic maps kept by the Brisbane City Council."[12]

[22] This issue involved surprising complexity, arising from the facts that the Council's topographic maps which included the proposed allotments were published electronically, in different scales, and with information which constrained the appropriate uses of the maps. The evidence revealed that the Council's electronic maps were provided to subscribers through the "eBIMAP" service. A search of the larger parcel of land from which the proposed allotments were derived (the "mother lot") allowed the subscriber to choose the scale of the map, whether a cadastral map was required, and the contour interval which the subscriber wanted the map to depict. A menu on the screen allowed the subscriber to choose amongst contour intervals of half a metre, one metre, or five metres, depending upon other search criteria. Mr Purcell's evidence was, for example, that a search of certain "mother lots" did not permit a half metre contour interval to be displayed at a scale greater than 1:2500. Similarly, the selection of the size of the page upon which the map was to be printed might alter the contour intervals which the search would reveal.

[23] The evidence revealed, and the trial judge found, that the Council's electronic map of land which, at the date of the contracts, comprehended the proposed allotments, depicted contours at half metre intervals, provided that the chosen scale of the map was less than 1:2500: "In other words, a search for a map of the relevant land showing natural surface contours at the smallest contour intervals would have revealed a map with contours at an interval of half a metre."[13]

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12 [2011] QSC 38 at [26].

13 [2011] QSC 38 at [30].

[24] However, Mr Purcell's evidence was that users of eBIMAP were directed to "metadata" associated with the electronic maps which identified the appropriate contour interval to use. A right click of the computer mouse next to the selection of contour intervals would take the user to the metadata. The metadata associated with both the half metre and one metre contours included the following:

> "*Use Constraints*: In the Flood Plains and Residential Areas, 90% of all well-defined spot elevations and DEM points are within 0.l5m of their true elevation and the remaining 10% do not exceed 0.3m of their true elevation. In the Non Residential Areas, 90% of all well-defined spot elevations and DEM points are within 0.3m of their true elevation and the remaining 10% do not exceed 0.6m of their true elevation. In areas where the number of ALS ground strikes fell to less than 50% of the total ALS strikes, contours were reclassified to 'approximate contour'. These 'approximate contours' are indicated by a dashed line."

[25] The metadata for the half metre contour interval stated:

> "*Abstract:* The 'Contour 02 (0.5m)' data set is a 0.5 metre Contour data set covering the Flood Plains and Residential Areas of Brisbane and in areas considered Non Residential or Forested, eg Brisbane Forest Park, the contour interval has been reduced to 1 metre."

The corresponding metadata for the one metre contour interval stated:

> "*Abstract:* The 'Contour 02 (1m)' data set is a 1 metre Contour data set covering Brisbane."

[26] Mr Purcell gave evidence (in his "Supplementary Report" dated 18 November 2010) that the metadata was a "key component in the use and understanding of GIS data". ("GIS" stands for "Geographic Information System", of which eBIMAP is one example.) Mr Ralph, a "Spatial Information Officer" employed by the Brisbane City Council who had provided systems support for eBIMAP since it first came into existence in August 2005, gave evidence that his approach had always been to direct users of the system to the metadata. He would not advise a subscriber to act inconsistently with the metadata. Rather, he would always say that whether or not a particular contour interval should be used for a non residential area was governed by the metadata and the terms and conditions of use of the eBIMAP system, and that the guidelines in the metadata should be applied.

[27] Mr Purcell considered that the land was "Non Residential", a term which Mr Purcell said that a surveyor ordinarily would interpret as meaning land which is not used for residential purposes. The quoted "abstracts" therefore required the use of one metre intervals. A second reason for not using half metre contour intervals was that, because (as specified in the "use constraints") the contours for non residential land were correct within plus or minus 0.3 metres, the potential variation of 0.6 metres made contour intervals of 0.5 metres unreliable. Similarly, another surveyor, Mr Baker, expressed the opinion that, whilst it was possible with the eBIMAP service to "zoom in on the map and thus to make the contour interval reduce from 1 metre to 0.5 metres", that was not an appropriate course when preparing a disclosure plan for proposed Lots 10 and 11. The impression of greater definition or accuracy which it gave was misleading because the metadata indicated that the degree of accuracy was plus or minus 0.3 metres for 90 per cent of all spot

elevations. To use 0.5 metres when that was the degree of accuracy would create a misleading impression of the accuracy of the data.

[28] Mr Barbaro wrote in his report that it was "reasonable that a contour interval of 1.0m could be the smallest contour interval available to an accuracy of plus or minus 0.3m for non residential areas", but in his oral evidence he said that intervals of half a metre should have been used because they were the smallest depicted upon the Council's maps. The trial judge noted that Mr Barbaro's evidence reflected an assumption about the legal question whether s 9 required the smallest contour intervals to be employed irrespective of what the Council published with the map which qualified what it had otherwise represented.[14]

[29] The trial judge also referred to a letter to the Council written by the entity which the Council had commissioned to produce the electronic maps. The letter made it plain that the reference to "Non Residential Area" was a reference only to the area of the Brisbane Forest Park and did not include any other area, such as the area comprehending the proposed allotments, which had not been developed for residential purposes. As the trial judge noted, the content of that letter was not accurately reproduced in the published metadata, which conveyed that any non residential area was subject to the "use constraints".[15]

[30] In holding that "the appropriate contour intervals" for the proposed allotments were one metre, the trial judge reasoned as follows:[16]

> "Section 9(7) requires the use of contour intervals of not more than the smallest of the contour intervals 'shown' on a local government topographic map that includes the allotment. In my view, what is shown on a topographic map includes any text which is published with that map and which affects what is represented by the map. A scale on a map would be an example. But the metadata is also within this category. According to Mr Purcell, whose opinion as a surveyor is uncontradicted on this question and which I accept, the effect of the metadata is that contour intervals of half a metre, if appearing on a map for land which was non residential, would be unreliable and that the landscape would be reliably represented by intervals of no less than one metre. It is not to the point that, having regard to the letter from the entity which prepared the maps, the metadata should not have been in those terms.
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> It cannot be supposed that the purpose of s 9 of the LSA would be served by its requiring information to be provided which was unreliable and likely to mislead a purchaser and which the vendor, if properly advised as to what was represented by a relevant topographic map, would know was unreliable. In this instance, the smallest contour interval represented by the Council to be reliable, in its publication of topographic maps, was an interval of one metre. It follows that the appropriate contour intervals were those used on this disclosure plan."

[31] HM Australia argued that the trial judge's finding that a search for a map for the proposed allotments showing natural surface contours at the smallest contour

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14 [2011] QSC 38 at [32].
15 [2011] QSC 38 at [33] - [34].
16 [2011] QSC 38 at [35] - [36].

intervals revealed a map with contours at an interval of half a metre required the conclusion that the "appropriate contour intervals" as defined in s 9(7) were half a metre. HM Australia made the following submissions. The trial judge's approach implied a requirement into s 9(7)(b)(i) that, in determining that measure, regard must be had to the reliability of the contour intervals shown on the relevant local government topographic map. That was not so, since the purpose of s 9(7) was not to provide the natural surface contours for the necessary contour map, but rather merely to set the measure of the necessary contour intervals, being the smallest contour intervals shown on the relevant local government topographic map. The irrelevance of the metadata was also indicated by the absence of a definition in the metadata of "Residential" or "Non Residential". Although the letter from the entity which carried out the mapping was not publicly available, it illustrated the artificiality of relying upon the metadata. HM Australia's own expert witness, Mr Purcell, gave evidence that his company used 0.5 metric contour intervals for property within the Brisbane City Council area for all of its disclosure plans.

[32] The last point is irrelevant. What Mr Purcell said in evidence was that his company used 0.5 metre contours as the standard because its disclosure plans were almost always derived by ground survey. That company's practice has no bearing upon the proper construction of s 9(7) of the LSA. The question is what contour intervals are "shown" on the public map. In answering that question, the information published with the map which bears upon the meaning of the information in the map must be taken into account.

[33] Treton was not inclined to challenge HM Australia's submission that the public maps which are identified in s 9(7)(b) are relevant only for the purpose of supplying the measure of the contour intervals, but I do not accept that submission. It assumes that vendors must produce their own contour maps by conducting ground surveys and using contour intervals derived from the relevant public map. Ground surveys may be necessary to comply with s 9(7)(a) for proposed allotments of not more than 2,000 square metres, at least if there is no available map showing natural surface contour intervals of half a metre. However, s 9(7)(b) adopts the different methodology of specifying the appropriate natural surface contour intervals by reference to public topographic maps. HM Australia's argument attributed no significance to the contrast between the two paragraphs of s 9(7), but the obvious implication is that for large proposed allotments (those exceeding 2000 square metres), for which a ground survey would be more expensive and time consuming, vendors are entitled to adapt the relevant public map for use in the disclosure plan. The trial judge found that there were readily available maps of that kind from which the map required by s 9(2)(c)(i) could be produced.[17]

[34] That tends to confirm that it was not the legislative intention that vendors should ignore information published with the relevant map which identifies the applicable natural surface contour interval and which makes it clear that the use of a smaller interval would be misleading.

[35] The absence of definitions of the terms "Residential" and "Non Residential" is of no moment, there being no relevant ambiguity in the meaning of those terms. Nor is it relevant that the information published by the Council did not accurately reflect the data collected by the entity which the Council commissioned to produce the

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17 [2011] QSC 38 at [16].

electronic maps. The information in the entity's letter was not indicated in any way on any published map.

[36] The applicable constraints upon the use of the maps were, however, "shown" on the relevant map. Users of the eBIMAP service are directed to the metadata. It is electronically embedded in the published maps and readily capable of display by the simple expedient of a click of the computer's mouse. As the trial judge reasoned, the metadata falls within the same category as a scale on the map, in each case the information being published with the map and affecting what is represented by it.

Disposition and orders

[37] For these reasons I would dismiss the appeal in CA No 3275 of 2011.

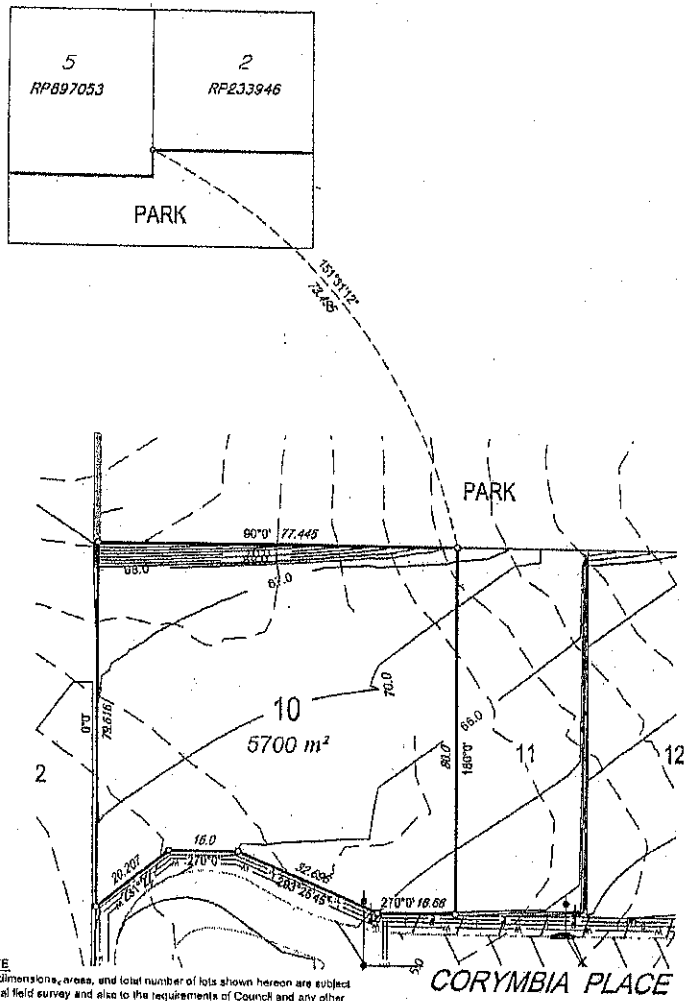
[38] In CA No 3737 of 2011, HM Australia appealed by leave against the trial judge's order that it pay Treton's costs of the proceedings. The notice of appeal made it plain that the costs appeal was premised upon HM Australia succeeding in the substantive appeal. Accordingly, the costs appeal should also be dismissed.

[39] The appropriate orders are:

(a) The appeal in CA No 3275 of 2011 is dismissed with costs.

(b) The appeal in CA No 3737 of 2011 is dismissed with costs.

[40] **CHESTERMAN JA:** I agree with Fraser JA.



METES AND BOUNDS DESCRIPTION OF PROPOSED LOT 10
FROM THE SOUTH WESTERN MOST CORNER OF LOT 2 ON RP233946
IN A SOUTH EASTERLY DIRECTION AT A BEARING OF 161 DEGREES 31'12"
FOR A DISTANCE OF 73.495 METRES TO THE POINT OF COMMENCEMENT
THENCE

IN A SOUTHERLY DIRECTION AT A BEARING OF 180 DEGREES 00'00"
FOR A DISTANCE OF 80 METRES (MORE OR LESS), THENCE
IN A WESTERLY DIRECTION AT A BEARING OF 270 DEGREES 00'00"
FOR A DISTANCE OF 16.66 METRES (MORE OR LESS), THENCE
IN A NORTH WESTERLY DIRECTION AT A BEARING OF 293 DEGREES 25'45"
FOR A DISTANCE OF 32.696 METRES (MORE OR LESS), THENCE
IN A WESTERLY DIRECTION AT A BEARING OF 270 DEGREES 00'00"
FOR A DISTANCE OF 16 METRES (MORE OR LESS), THENCE
IN A SOUTH WESTERLY DIRECTION AT A BEARING OF 231 DEGREES 22'00"
FOR A DISTANCE OF 20.207 METRES (MORE OR LESS), THENCE
IN A NORTHERLY DIRECTION AT A BEARING OF 0 DEGREES 00'00"
FOR A DISTANCE OF 79.616 METRES (MORE OR LESS), THENCE
IN A EASTERLY DIRECTION AT A BEARING OF 90 DEGREES 00'00"
FOR A DISTANCE OF 77.445 METRES (MORE OR LESS).

TO THE POINT OF COMMENCEMENT AND CONTAINING AN AREA OF
5700 SQUARE METRES (MORE OR LESS).

NOTE
The dimensions, areas, and total number of lots shown hereon are subject to final field survey and also to the requirements of Council and any other authority which may have requirements under any relevant legislation.

Electricity and Telstra shown on this plan are indicative only. Location of the services were plotted from plans supplied by the relevant authorities

LEGEND

—— 13.0 ——	FINISHED CONTOURS SURFACE Sourced From Engineering Design Plans. Dwg No. B03161C-07A
— — 13.0 — —	EXISTING CONTOURS
▬▬▬▬	Retaining Wall

There are earthworks proposed for LOT 10

THG resource.strategists

SCALE 1:1000

No.	REVISIONS	Date	Chkd
A	Amended Lot		MRK
	Original Issue		

IMPORTANT NOTES - (these notes are an integral part of this plan)
This plan has been prepared for TRETON PTY LTD for the purposes of A Disclosure Plan Under the Land Sales Act 1984.

PARISH: MITCHELL/YEERONGPILLY
COUNTY: STANLEY
LOCALITY: PARKINSON

PROJECT: SouthLink Business Park
PLAN OF: DISCLOSURE PLAN
Plan of Proposed Lot 10
situated on LOT 7 ON SP109178, LOT 4 ON RP233946 & LOT 3 ON RP233946
CLIENT: TRETON PTY LTD

Job No. C4479-DP10 Dwg No. Rev A
Sheet 1 of 1