

## MINISTERIAL POWERS OF INTERVENTION IN PLANNING AND HERITAGE MATTERS

### REASONS FOR DECISION TO INTERVENE

#### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL APPLICATIONS FOR REVIEW P1431/2009 & P1768/2009

The *Planning and Environment Act 1987 (PE Act)*, the *Heritage Act 1995* and the *Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act)* provide that the Minister for Planning (the **Minister**) may intervene in planning and heritage processes.

In exercising my powers of intervention, in accordance with the *Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note* (November 2004) (the **Practice Note**), I have agreed to:

- Make publicly available written reasons for each decision to intervene (an **intervention**).
- Report to Parliament at least every twelve months detailing the nature of each intervention.

#### REQUEST FOR INTERVENTION

1. Minter Ellison Lawyers, on behalf of its client, Cherry River Pty Ltd (the **permit applicant**) requested the intervention.

#### THE INTERVENTION

2. Clause 58 of Schedule 1 of the VCAT Act empowers the Minister to call-in a proceeding for review of a decision under the PE Act from the Victorian Civil and Administrative Tribunal (VCAT).
3. If the Minister decides to intervene, Clause 58(1) of Schedule 1 of the VCAT Act requires that the Minister for Planning must consider that:
  - The proceeding raises a matter issue of policy; and
  - The determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

#### BACKGROUND

4. The proceeding concerns a permit application under the *Stonnington Planning Scheme* (the **scheme**) for a fifteen level mixed use development comprising ground level retail and gym and upper level commercial office space and residential apartments. The permit application also includes 196 car parking spaces and 42 bicycle parking spaces.
5. The land is located at 12-14 Claremont Street, South Yarra and is currently used as a car park.
6. Stonnington City Council (the **Council**) was the responsible authority for determining the permit application.

7. Notice was given of the permit application and one person objected to the grant of a permit (the **objector**).
8. On 8 May 2009, the Council issued a Notice of Decision to Grant a Permit, subject to 20 conditions.
9. On 1 June 2009, the objector applied to VCAT to review the Council's decision to grant a permit (VCAT Ref P1431/2009).
10. The permit applicant has also applied to VCAT to review specified conditions in the permit the Council decided to grant (VCAT Ref P1768/2009).
11. The parties to applications VCAT Ref P1431/2009 and VCAT Ref P1768/2009 (the **proceeding**) are the Council, the objector and the permit applicant.
12. VCAT has listed the matters for a hearing on 21 October 2009.

### **CONSULTATION**

13. The views of owners and occupiers of land to whom the grant of a permit may cause material detriment were sought and obtained by the Council following the giving of notice of the permit application.
14. The parties will be given the opportunity to be heard in respect of any submission they may wish to make about the determination of the proceeding before I make a recommendation to the Governor in Council.

### **REASONS FOR INTERVENTION**

#### *Practice Note criteria*

15. The Practice Note states the criteria that will usually be relevant in the Minister's decision about whether or not to intervene. The Practice Note emphasises that an overriding consideration on a decision to intervene is Clause 58(1) of Schedule 1 to the VCAT Act, the legislative provision in question.
16. I am satisfied that the criteria in the Practice Note are met for the intervention because:
  - Criterion 1: The matter is one of genuine State or regional significance, as the proceeding raises a major issue of policy and the determination of the proceeding may have a substantial effect on achievement or development of planning objectives.
  - Criterion 2: The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.

#### *Legislative criteria*

17. I consider the criteria in Clause 58 of Schedule 1 of the VCAT Act are met.
  - (a) *Major issue of policy*
18. The proceeding raises the following major issues of policy - *Melbourne 2030*, *Melbourne @ 5 Million* and the policies relating to the Forrest Hill area as outlined in Clause 22.17 (Forrest Hill Precinct Policy) of the scheme.

19. In particular:

- *Melbourne 2030* encourages the location of a substantial proportion of new housing in or close to activity centres, promotes good urban design to make the environment more liveable and attractive, and the need to recognise and protect cultural identity.
- *Melbourne @ 5 million* identifies a need for an additional 600,000 dwellings over the next 20 years of which almost 316,000 dwellings are anticipated to be in Melbourne's established areas.
- *Forrest Hill Precinct Policy (Clause 22.17)*, which was prepared to support the objectives of the Forrest Hill Structure Plan 2005, seeks to create a vibrant sustainable mixed use precinct where people live, work and visit and to accommodate intensive development and high quality building design. Development should contribute to the creation of a high quality, safe and distinctive public realm with an emphasis on, amongst other things, walkability, active street frontages and improved connectivity, including the creation of a new east-west link through the precinct.

(b) *Planning objectives*

20. The determination of the proceeding may have a substantial effect on the achievement or development of the following planning objectives – the State Planning Policy Framework, the Local Planning Policy Framework (including the policy relating to the Forrest Hill area), the Forrest Hill Structure Plan 2005, the Design and Development Overlay 5 in the scheme, and those in section 4 of the PE Act.

21. In particular:

- The State Planning Policy Framework encourages sustainable development that takes full advantage of existing settlement patterns and services, developments that meet the community's needs for retail, entertainment, community facilities etc, and a mix of land uses in activity centres.
- The Local Planning Policy Framework encourages a range of residential, commercial and other uses in a Business 2 Zone and recognises the Forrest Hill Precinct as an area of change and regeneration with the ability to make a significant contribution to the achievement of Melbourne 2030 policies and directions and to create a built form that makes a positive contribution to the private and public realms.
- The Forrest Hill Structure Plan 2005 envisages a vibrant, higher density mixed use precinct that makes a significant contribution towards providing housing and employment opportunities in and around in the Prahran / South Yarra Principal Activity Centre.
- The built form objectives of Schedule 8 to the Design and Development Overlay (DDO8) acknowledges the potential for higher density development within the precinct and the desire to create a high quality private and public realm environment, where opportunities for increased walkability and public realm improvements should be realised. This should be done in a way which

appropriately responds to the context of the area, enhances the public realm, improves safety, protects significant viewlines and enhances pedestrian spaces.

- The objectives of planning in Victoria in section 4 of the PE Act, especially s 4(1)(a), (c), (f) and (g) and s 4(2)(e) and (g)..

#### **DECISION**

22. I have therefore decided to give notice to the Principal Registrar of VCAT to call in the proceeding pursuant to Clause 58(2)(a) of Schedule 1 of the VCAT Act for determination by the Governor in Council.

**JUSTIN MADDEN MLC**  
**Minister for Planning**

Date:

  
**17 AUG 2009**