

**MINISTERIAL POWERS OF INTERVENTION IN PLANNING
AND HERITAGE MATTERS**

REASONS FOR DECISION TO INTERVENE

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
APPLICATION FOR REVIEW P2220/2009**

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 Barton Australia Group Pty Ltd (the Appellant) 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 Clause 58(1) of Schedule 1 of the VCAT Act provides that the Minister for Planning may call in a proceeding if he considers that
 - The proceeding raises a major 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 an appeal against the refusal of the City of Whitehorse to approve a permit application for the construction of a 38 storey residential and mixed use development comprising 232 dwellings 176 serviced apartments 3 levels of retail development and 6 levels of basement car parking
- 5 The land the subject of the proceeding is located at 545-563 Station Street Box Hill and is currently used as an open car park
- 6 Whitehorse City Council (the Council) is the responsible authority for determining the permit application

- 7 Notice was given of the permit application and 21 objections were received to the grant of a permit (the objectors)
- 8 On 19 August 2009, the Council issued a Refusal to Grant a Planning Permit, on the grounds of inconsistency with planning policy excessive building scale inadequate open space insufficient car parking impacts on traffic flow and existing infrastructure and overdevelopment of the site
- 9 On 25 August 2009 WSC Planning Pty Ltd on behalf of the Appellant applied to VCAT to review the Council's decision to grant a permit (VCAT Ref P2220/2009)
- 10 The parties to the application for review VCAT Ref P2220/2009 (the proceeding) are the Appellant Council 5 objectors Vic Roads and the Director of Public Transport
- 11 VCAT has listed the matter for a four day hearing commencing on 15 February 2009

CONSULTATION

- 12 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
- 13 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

- 14 The Practice Note (Ministerial Powers of Intervention in Planning and Heritage Matters (November 2004)) sets out the criteria that will usually be relevant in the Minister's decision about whether or not to intervene pursuant to Clause 58 of Schedule 1 to the *VCAT Act*
- 15 The relevant criteria provide

While all the circumstances in which intervention may be considered cannot be prescribed the following criteria will usually be relevant

1 The matter will be one of genuine State or regional significance Such situations may include, for example those

- Where the determination of the application may have a substantial effect on the achievement or development of State or regional planning or heritage objectives*
- Which raise a major issue of State or regional policy or public interest such as the implementation of Melbourne 2030 objectives*
- Which would have significant effects beyond their locality*

1 The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known

- ii *The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme)*
- iii *The matter will raise issues of fairness or public interest where*
 - *The mechanisms for the planning process have created a situation that is unjust, unreasonably causes hardship or is clearly in error*
 - *Anomalous provisions apply and the valid intent is clearly evident or simple inconsequential correction is required*
 - *There is a need for urgency and the public interest would be served by immediate action,*
 - *The matter is unlikely to be reasonably resolved by the process normally available*
- iv *The matter requires co-ordination to facilitate decision-making by more than one agency*

As an overriding consideration Ministerial powers will only be exercised having regard to and within the confines of the legislative provision in question

16 I am satisfied that the first criterion in the Practice Note, and therefore the legislative criteria set out in Clause 58 of Schedule 1 of the VCAT Act, is met. The reasons I have reached this conclusion comprise the following:

(a) *Major issue of policy*

17 The proceeding raises the following major issues of policy - *Melbourne 2030*, *Melbourne @ 5 Million* and the policies relating to the Box Hill Central Activities District as outlined in Clauses 12, 21 07, 22 07 and 34 01 of the scheme.

18 In particular, the proposal delivers the following policies:

- *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.

(b) *Planning objectives*

- 19 The determination of the proceeding may have a substantial effect on the achievement or development of the following planning objectives
- The objectives of planning in Victoria in section 4 of the PE Act, especially sections 4(1)(a), (c), (f) and (g) and s 4(2)(e)
 - The objectives of *Melbourne@5Milhon*, which identifies Box Hill as being one of the six Melbourne Central Activities Districts that are to be promoted as the focus for a substantial proportion of future employment growth and public investment
 - The State Planning Policy Framework that 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 and a mix of land uses in activity centres
 - The Local Planning Policy Framework that encourages an increase in employment and investment opportunities within the Box Hill Principal Activity Centre. Additional residential, commercial, and entertainment facilities are considered vital to the strengthening of Box Hill's role as a regional activity centre
 - *Box Hill Central Activities District* (Clause 22 07), prepared to support the *Box Hill Transit City Activity Centre Structure Plan* (June 2007), envisages that the Box Hill Activity Centre will create more and diverse opportunities for housing (including affordability), support social and economic development and lifestyle aspirations and encourage complementary mixed uses and links between activities. High density built form is encouraged where design excellence is shown

DECISION

- 20 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 8 1 2010