

MINISTERIAL POWERS OF INTERVENTION IN PLANNING AND HERITAGE MATTERS

REASONS FOR DECISION TO EXERCISE POWER OF INTERVENTION

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL APPLICATION FOR REVIEW P2758/2007

The *Planning and Environment Act 1987*, the *Heritage Act 1995* and the *Victorian Civil and Administrative Tribunal Act 1998* provide for the intervention of the Minister for Planning 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*, I have agreed to:

- Make publicly available written reasons for each decision, including an explanation of how the circumstances of the matter respond to the Practice Note and the legislative criteria for that action.
- Provide a report to Parliament at least every twelve months detailing the nature of each intervention.

REQUEST FOR INTERVENTION

1. The request for intervention has been made by Mornington Peninsula Shire Council.

WHAT POWER OF INTERVENTION IS BEING USED?

2. Clause 58 of Schedule 1 of the Victorian Civil and Administrative Tribunal Act 1998 enables the Minister for Planning to call-in a proceeding for review of a decision under the *Planning and Environment Act 1987*, from the Victorian Civil and Administrative Tribunal (VCAT).
3. In seeking to exercise this power, Clause 58(1) of Schedule 1 of the *VCAT Act* requires that the Minister for Planning must satisfy him or herself 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. An application for planning permit (P07/0787) proposing the use and development of a bitumen storage facility including the construction of two 10,000 cubic metre storage tanks and two smaller day tanks together with a loading gantry and associated infrastructure on land at 97 The Esplanade, Crib Point was received by the Mornington Peninsula Shire Council on 24 April 2007. The applicant is Boral Construction Materials Limited.
5. The site is located adjacent to the Crib Point jetty, approximately 4 kilometres south-east of Bittern. The land is freehold land and within a Public Use Zone 7 – Other public use. The proposed use and development requires a planning permit.
6. On 26 October 2007, the applicant lodged a review (P2758/2007) with VCAT against Council's failure to determine the application within the prescribed time of 60 days. A Practice Day Hearing was held on Friday, 1 February 2008. An 8 day hearing is listed to commence on 28 April 2008.

CONSULTATION

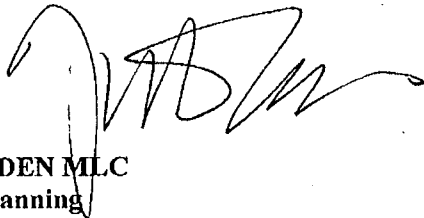
7. N/A.

REASONS FOR INTERVENTION

8. The *Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note* requires the Minister for Planning to meet certain criteria in the exercise of Ministerial powers of intervention. As an overriding consideration, Ministerial powers will only be exercised having regard to and within the confines of, the legislative provision in question.
9. I am satisfied that the circumstances for Ministerial intervention and the nature of the proposed amendment satisfy the relevant criteria in *the Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note* on the following basis:
- Criterion 1: The matter will be one of genuine State or regional significance, as the determination of the application may have substantial effect on achievement or development of State or regional planning objectives (the future development of the Port of Hastings).
 - Criteria 5: The matter requires coordination to facilitate decision making by more than one agency. It is anticipated that input from a number of State Government agencies including the Port of Hastings Corporation, DIIRD and VicRoads will be required.
10. In accordance with the requirements of Clause 58 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, I consider that –
- The facility in question is a facility of State interest, and the matter raises major policy issues, including interpretation and implementation of the existing Hasting Port Industrial Area Land Use Structure Plan and the draft Port of Hastings Land Use and Transport Strategy (PLUTS).
 - Determination of the proceeding may have a substantial effect on the ability of State and local governments to provide for the fair, orderly, economic and sustainable use, and development of land.

DECISION

11. I have therefore decided to call in the application from the Victorian Civil and Administrative Tribunal pursuant to Clause 58(2)(a) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*.



JUSTIN MADDEN MLC
Minister for Planning

- 8 APR 2008

Date: