

**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 P2162/2009**

The *Planning and Environment Act 1987 (PE Act)*, the *Heritage Act 1995* and the *Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act)* provide for the intervention of the Minister for Planning (the **Minister**) 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. The request for intervention has been made by Urbis, on behalf of its client, Woolworths (Fabcot Ltd) (the **permit applicant**).

THE INTERVENTION

2. Clause 58 of Schedule 1 of the VCAT Act enables 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. In seeking to exercise this power, Clause 58(1) of Schedule 1 of the VCAT Act requires that the Minister 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 *Bass Coast Planning Scheme* (the **scheme**) for the redevelopment of the existing Boomerang Caravan Park for the purposes of a supermarket (2,330 sq.m.), specialty retail premises and 198 car parking spaces.
5. The land is located at 119-135 Thompson Avenue, Cowes and currently contains the Boomerang Caravan Park.

6. Bass Coast Shire Council (the **Council**) was the responsible authority for considering the permit application.
7. Notice was given of the permit application and 23 individuals objected to the grant of a permit (the **objectors**).
8. On 18 August 2009, the permit applicant applied to VCAT after Council failed to determine the application within the statutory period (VCAT Ref 2162/2009).
9. Ten objectors submitted a Statement of Grounds to VCAT.
10. The parties to application VCAT Ref P2162/2009 (the **proceeding**) are the Council, nine objectors, VicRoads and the permit applicant.
11. VCAT has set down five days to hear this matter commencing 30 November 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. Nine objector parties have lodged a Statement of Grounds with VCAT in relation to the proceeding.
14. The parties to the VCAT review 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 following criteria in the Practice Note are met:
 - 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.
 - Criterion 5: The matters requires coordination to facilitate decision-making by more than one agency.

Legislative criteria

17. I consider the criteria in Clause 58 of Schedule 1 to the VCAT Act are met based on the following grounds.

(a) *Major issue of policy*

18. The proceeding raises the following major issues of policy:

- *Melbourne 2030*, as outlined in Clause 12 of the scheme, encourages the location of a substantial proportion of new commercial development in or close to activity centres, promotes good urban design to make the environment more liveable and attractive, and the encouragement of energy efficient building design.
- *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. The ability to provide opportunities for employment, retail, leisure and community facilities is an implicit part of the strategy.
- *Metropolitan Development (Clause 12.01-1)*, a central tenet of Clause 12 is to concentrate new development at activity centres near current infrastructure and in areas best able to cope with change. Within the context of Phillip Island, Cowes is the largest town and provides a significant source of jobs, shopping, leisure and community facilities on the island.
- *Economic Development (Clause 17.02-2)*, specifically seeks new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres.

(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) and (g).
- The State Planning Policy Framework, which encourages sustainable development that takes full advantage of existing settlement patterns and services, developments that meet the community's needs.
- The purpose of the Mixed Use Zone includes to provide for a range of residential, commercial, industrial and other uses which complement the mixed use nature of the area.

DECISION

20. I have therefore decided to give notice to the Principal Registrar of VCAT to call in VCAT Proceeding Reference P2162/2009 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

