

**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 P946/2009**

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 Ubertas Group Pty Ltd.

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 *Victorian Civil and Administrative Tribunal Act 1998* 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. On 28 November 2008, a planning permit application was lodged with the City of Port Phillip (Council) to use and develop the land at 568 St Kilda Road, Melbourne for 152 dwellings (apartments); 122 serviced apartments (residential hotel); a 90-seat restaurant and a private gym; vary the requirements of the Design and Development Overlay (DDO4); and reduce the car parking requirements (Application No. 1255/2008).

5. The land at 568 St Kilda Road, Melbourne is located on the west side of St Kilda Road between Roy Street and Beatrice Street. The land has a frontage of approximately 30 metres to St Kilda Road, a rear boundary along Queens Lane and a total area of approximately 2,348 square metres.
6. The land at 568 St Kilda Road, Melbourne is included in the Business 5 Zone. A Design and Development Overlay (Schedule 4) also applies to the land.
7. A Notice of Decision to Grant a Permit was issued by Council on 11 February 2009.
8. A Planning Permit was subsequently issued by Council on 13 March 2009 as no application for review of Council's decision was lodged with VCAT.
9. An appeal against conditions of the planning permit was lodged with VCAT on 21 April 2009 (VCAT Reference No. P946/2009).

CONSULTATION

10. The views of parties were identified through the planning permit application process.

REASONS FOR INTERVENTION

11. 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.
12. 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:
 - Criteria 1: The matter will be one of genuine State or regional significance, as the determination of the application may have a substantial effect on the achievement or development of State planning objectives.
 - Criteria 2: The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.
 - Criteria 4: The matter will raise issues of fairness or public interest, as there is a need for urgency and the public interest would be served by immediate action.
13. In accordance with the requirements of Clause 58 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, I consider that –
 - The proceeding raises a major issue of policy in that the proposal is consistent with the key directions of *Melbourne 2030* and *Melbourne @ 5 Million*; and
 - The determination of the proceeding may have a substantial effect on the achievement or development of State planning objectives, including the implementation of *Melbourne 2030* and *Melbourne @ 5 Million*.
14. In particular, the proposal will achieve the objectives of planning in Victoria as outlined in section 4 of the *Planning and Environment Act 1987*. In particular, section 4(1)(a), by providing for economic and sustainable use and development of land in a

fair manner, section 4(1)(c), by securing a pleasant, efficient and safe working, living and recreational environment, section 4(1)(f), by facilitating development in accordance with the objectives in the preceding sections, and section 4(1)(g), in that it balances the present and future interests of all Victorians. The proposal will also balance the objectives of the planning framework, including the objectives in section 4(2)(e) and 4(2)(g) of the Act.

15. The proposal is consistent with the key directions of *Melbourne 2030* which encourage a greater proportion of new dwellings on strategic redevelopment sites within established metropolitan areas to reduce pressure for urban expansion.
16. The proposal is consistent with *Melbourne @ 5 Million* which 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. More specifically, the proposal will facilitate more intensive residential development on land located on a major transport corridor with convenient access to public transport services and the Central Business District.
17. The proposal is consistent with the State Planning Policy Framework, including Clauses 12, 14, 16 and 19 which encourage higher density residential development on land that is located in proximity to activity centres and public transport. The proposal is also consistent with the Local Planning Policy Framework which recognises St Kilda Road as a location for higher density residential development.

DECISION

18. 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

Date: **29 APR 2009**