

MinterEllison

17 January 2020

BY EMAIL

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Dear Madam Chair

Amendment C393 to the Greater Geelong Planning Scheme (Amendment)

We refer to the above matter and confirm we continue to act for Shell Road Developments Pty Ltd (**Shell Road**). We also refer to the Panel's further directions issued in respect of the Amendment, dated 11 December 2019 (the **11 December Directions**)

In accordance with Item (ii) of the 11 December Directions, Shell Road seeks to respond to the Part D documentation put to the Panel by City of Greater Geelong (**Council**) in response to the Panel's Directions of 1 November 2019 (**1 November Directions**). We note that this response also deals with matters raised in the Council's Part C documentation and its letter of 14 January 2020, to the extent they are relevant.

1. Revisions to the Retail Strategy

- 1.1 Firstly, the Panel has previously noted correspondence addressed to it on behalf of Shell Road on 20 December 2019 indicating that, in its view, Council has failed to comply with Item (i) of the 11 December Directions in respect of the revised Retail Strategy. Shell Road acknowledges the letter and attachments filed on behalf of Council on 14 January 2020.
- 1.2 Notwithstanding the lateness of this response from Council, Shell Road considers the response from Council to be inappropriate and unacceptable. It remains Shell Road's view that Council has failed to respond to Item (i) of the 11 December Directions, as it has not provided a fully tracked version of the Retail Strategy.
- 1.3 It is not the responsibility of Shell Road to expend the resources to undertake the complicated comparison exercise as suggested by Council's representatives in their letter of 14 January 2020. Council is the appropriate party to undertake this work, and it has both failed and then refused to do so.
- 1.4 Notwithstanding the above, Shell Road has undertaken a high level review of the Retail Strategy, with the assistance of Mr Ganly. Its comments are as follows:
 - (a) the revised Retail Strategy does not address Shell Road's concerns as put to the Panel. Importantly, it:
 - (i) seeks to alter the boundaries for the Kingston Downs Neighbourhood Activity Centre (**KDNAC**) in a manner which reduces the overall size of the centre;
 - (ii) allocates even further retail floorspace **away** from sub-regions around the City of Greater Geelong towards Central Geelong and Corio Norlane. Pursuant to the estimates contained in the revised Retail Strategy, Central Geelong alone will be undersupplied by approximately 256,000 square metres of floorspace, equivalent to five times that of Westfield Geelong. This is a stark contrast to the exhibited



Retail Strategy, which showed Central Geelong with a minor **oversupply** of floorspace (see page 42 of the exhibited Retail Strategy);

- (b) the revised Retail Strategy continues to suggest that there is not sufficient demand at Ocean Grove to support ongoing development of the KDNAC, which Shell Road submits is fundamentally incorrect. Further, Council has now sought to introduce wording into the Retail Strategy which suggests any further development of the KDNAC could threaten the Ocean Grove Town Centre and Ocean Grove Marketplace. As demonstrated by the evidence of Mr Ganly, further development of the KDNAC as contemplated by the multiple layers of planning which have already been completed in respect of that centre show that all three centres can operate harmoniously, even in the event the KDNAC progresses to a fully built-out position across all Commercial 1 Zone land (as contemplated by the KDNAC Development Plan). Shell Road reiterates that this position is further supported by the *Ocean Grove Economic Analysis* prepared by SGS Economics in April 2015, produced to the Panel by Council as part of this Amendment process;
 - (c) Shell Road otherwise repeats its submissions in respect of the Amendment. Shell Road is of the view that the changes to the Retail Strategy have not addressed Shell Road's concerns in any way, and as a result, its position remains as put to the Panel.
- 1.5 Shell Road also refers to the revised Tables 12 and 14 provided by Mr Szafraniec and repeats its statements above, namely that they do not address Shell Road's concerns. Shell Road maintains the position put to the Panel in respect of the Amendment in this respect.
- 2. Revised Schedule to the Commercial 1 Zone**
- 2.1 Shell Road notes the proposed change to the "Shop" floorspace cap for the KDNAC, which has been increased to 8,700 square metres.
- 2.2 This position has not moved beyond that position which was put to the Panel during the hearing of the Amendment.
- 2.3 As a consequence, Shell Road repeats its position as put to the Panel, and reiterates that:
- (a) there should not be a "Shop" floorspace cap included for the KDNAC in the Schedule to the Commercial 1 Zone;
 - (b) if such a cap is introduced, it should be set at a minimum of 15,000 square metres.
- 3. Revised Clause 21.19**
- 3.1 Shell Road supports the proposed changes to the table at page 12 of Clause 21.19, being the addition of the words "Role and Function".
- 3.2 Notwithstanding this, Shell Road notes that the position put in relation to "out of centre" development in Clause 21.19-3 is inconsistent with wording in Clause 22.03. Clause 21.19 indicates that there will not be a scenario where out of centre development is supported, unless that development is on the "border" of an activity centre. In contrast, Clause 22.03 allows for an applicant to produce information as to why that out of centre development cannot be accommodated on the border of an activity centre. Council's position on this point appears confused and should be clarified.
- 4. Revised Clause 22.03**
- 4.1 Shell Road does not support the revisions to Clause 22.03 as put by Council.
- 4.2 Whilst Shell Road acknowledges that Council has made some efforts to amend this Clause, Shell Road is of the view that those changes do not go far enough, and the Clause as drafted remains fundamentally unworkable.
- 4.3 Whilst Council has sought to now state that only **use** applications must be accompanied by an Economic Impact Assessment (**EIA**) to the satisfaction of the Responsible Authority, Council still proceeds to include the very detailed list of matters which an EIA now "should" cover. This list is unnecessary given the broad powers of Council to require an EIA, and causes confusion.

4.4 Shell Road maintains its position that Council's current approach to retail centre applications, as set out in the current form of the Greater Geelong Planning Scheme, is appropriate and does not require amendment.

5. Population material

5.1 Shell Road also refers to the population material provided by Council in response to bullet point 7 of the 1 November Directions. Shell Road notes that the issue of population growth at Ocean Grove has been raised as a result of the comments in Mr Szafraniec's oral evidence (and associated presentation) that retail demand should be reconsidered where population growth for a catchment exceeds 2%.

5.2 Respectfully, Shell Road submits that the population material compiled by Mr Schembri does not constitute a reconsideration of the population growth numbers for Ocean Grove as contemplated by the 1 November Directions.

5.3 Shell Road was of the understanding, following the conclusion of the Panel hearing, that Mr Szafraniec would be engaged to undertake this work.

5.4 Instead, it appears that Mr Schembri has compiled a series of population growth figures from various expert witness statements prepared for Amendment C395 to the Greater Geelong Planning Scheme (**Amendment C395**), in conjunction with what are acknowledged to be "back of the envelope estimates" from staff members at the Department of Environment, Land, Water and Planning.

5.5 The commentary provided with this data is wholly unsatisfactory. Mr Schembri's comment of there being a "discrepancy" between the population growth data presented by Mr Ganly in this Amendment and Amendment C395 can at least be partially explained by the fact that the **catchments** for population presented in both of those figures are different – the population growth data presented for the Amendment represents population growth in the **retail catchment** for the KDNAC, whilst the population growth in Amendment C395 represents that for Ocean Grove.

5.6 Shell Road submits that the Panel can give no weight to the information presented by Council in relation to population growth matters, and repeats its submission that observed population growth for Ocean Grove (regardless of whether the town or the retail catchment for the KDNAC is considered) warrants revision of the floorspace estimates provided in the Retail Strategy.

6. Next steps

6.1 It is Shell Road's view that the Part D documents, particularly the Retail Strategy, do not address the issues raised by Shell Road in its submission to the Panel. Further, the revisions introduced by Council are not only substantive, but they are also unfounded and entirely unsupported by evidence.

6.2 Shell Road's position remains that as put to the Panel in its written and oral submissions to the Amendment. The Amendment should be:

(a) in the first instance, recommended to be abandoned; or

(b) in the event the Panel is minded to recommend the Amendment for approval, this should only occur in the event that:

(i) a "Shop" floorspace cap for the KDNAC is not included in Schedule to the Commercial 1 Zone;

(ii) if the Panel is minded to introduce a cap for the KDNAC, it should be increased to a minimum of 15,000 square metres; and

(iii) revisions are made to Clause 21.19 and Clause 22.03 as put to the Panel by Shell Road; and

(iv) the Retail Strategy, as a whole, is not included in the Planning Scheme.

6.3 Shell Road also submits that, as part of the final Panel Report issued for the Amendment, the Panel should record its concerns in relation to the Retail Strategy, or at a minimum, set out the concerns put by submitter to the Amendment.

- 6.4 We note that regardless of the Panel's future findings in respect of the Amendment, the Retail Strategy currently remains a document of Council policy, which Council could seek to rely upon in making future decisions. This is the case even if the Amendment does not proceed. Given the Retail Strategy has, by virtue of this Amendment, proceeded through a formal, independent hearing process, this could increase the weight Council seeks to give to it in future.
- 6.5 As a result, it is imperative that any concerns in relation to the contents of the Retail Strategy are put on the public record to allow persons to refer to those concerns as part of any future process where the Retail Strategy may be referred to and / or relied upon.
- 6.6 In relation to Item (iv) of the 11 December Directions, Shell Road indicates that it does not seek a further hearing on the morning of 21 January 2020, but is willing to attend that hearing should other parties request it.

Please contact us if you have any queries.

Yours faithfully

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