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MEEPPA INC. A0021787L

**WITHOUT PREJUDICE OR MALICE**

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Re Adjournment/Abandonment of Proceedings to date. VCAT Proceedings 25 March 2008

Ref.No. 1713/2007 Yarra Ranges V Woolworths Ltd.

The Mount Evelyn Environment Protection & Progress Association Inc. (MEEPPA) are of the belief that due to the serious and unfair inconsistencies that have plagued this Appeal Process since its inception in July of 2007 to the present date that this Appeal should be struck out and that the process should be restarted again for the following reasons.

- ❖ As outlined on August 24<sup>th</sup> of 2007 in front of Deputy President Gibson this community originally had in excess of 180 objectors and by a process of inadequate notification and administrative attrition that number has been reduced to 29 . Three of which were later given standing from a 28 day order granted at that Hearing in acknowledging the shortcomings of the process from that very early date.
- ❖ The Service of Notices prior to the first Hearing both from VCAT and the Legal entities has been nothing short of appalling as well as extinguishing this Community's legal rights. Many of the service times for these critical notices have either been NON existent or have been the subject of Tactical Manipulation by a party/parties which has brought the entire process into disrepute displaying Contempt for the Process, Contempt for this Tribunal but more seriously Contempt for the Community you serve.
- ❖ The changing of VCAT Lists of Objectors that has been altered on a daily basis with some names either substituted, omitted or more seriously, deliberately erased or obliterated which has led to the **wholesale failure** of Notices ever being served or delivered. Complaints to Legal Firms by this Association have been routinely referred back to VCAT who they quote as..., 'the Primary Source'. What does VCAT do with the information as the 'Primary Source' if it has been notified of these mistakes? We have consistently telephoned and written letters on this process which forms just one of our major complaints in this process and which is presently in the form of a written Submission of Complaints and is **currently in front of the Attorney General for his determination.**
- ❖ If a Person's or Association's name has been incorrectly omitted, changed or erased in some way and which has extinguished that entity's Legal Standing and Representation before this Tribunal. How do you address that unless this process begins anew because that is why out of 180+ objectors we are only now left with a handful of people? We have proof of these changes in the Lists. Certainly we have been informed on a number of occasions that we are not at liberty to publish these names due to Privacy provisions but if a Person/Organisation is omitted from that list then they will never know which critical notices are sent unless Community Groups such as MEEPPA seeks to ask each from the lists if they have been served – which is illegal?. This has to date been one of the most unsatisfactory and unsavoury aspects of this particular Appeal. If the actual lists can be tampered with in this way then that is a critical flaw in process – and yet we have proof that it has happened.

- ❖ But then we have also found that there are NO guarantees that you will be notified or served critical Notices even if your name **does** appear on the lists. So how in all conscience are we able to preserve our Rights and Standing before this Tribunal if we are omitted or erased? I have standing in my own right, and my name and contact details are correctly shown, but I personally have never been served with any notices since October of last year? Why?
- ❖ Initially we had stated that there had been no notice of Today's Hearing? We have now been informed by 4 Objectors that they received a Notice of this dated 1<sup>st</sup>. November last year. But now one now believes that it arrived on Tuesday 11<sup>th</sup>. March this year? This Association, I personally, as well as many other people have most certainly never been officially, informed of the Hearing Today. Why?
- ❖ The Service of all Documents relating to the current Amended Plans was subject to Deputy President Gibson's 'Order' of August 29<sup>th</sup> last year and was later upheld by Member Dwyer's Order of October of last year. NEVER once has this 'Order' been adhered to. The 'Order' was for .."**clearly readable scaled copies of the Amended PLANS**"....'**30 Business Days prior to the Hearing**'.. The initial Amended 'Plans' – (*What there was of them?*) were finally received by this Association on Monday February 11<sup>th</sup>. This consisted of a set of Very Small Plans along with a stapled 3 page A4 letter with no actual substance. Entitled.. "*Lodged Plans Review – Statement Describing Changes From Original Plans*" it was an INCOHERENT attempt at relating what the changes were in Reference to the Original Plans but was impossible to follow. All of the TP drawn Plans stated at the bottom ..'**Refer to Landscape Plan?** *The Landscape Plan was never amongst them nor any 'Traffic Plan', Nor Lighting Plans, Nor Acoustics Report, Nor Economic Impact Statement (Given that the Amended Plans show a dramatic increase in floor space – we felt that this should be important!) Nor Social Impact Statement, Nor Northern Elevation Plans and NO Three Dimensional Renderings and many more details that would be normally expected to form part of an application for such an enlarged and amended development.*
- ❖ .In fact out of 114 unique components of the Original Plans from the Shire of Yarra Ranges we were served only 17 items in total that could in any way be used to re-assess the Amended Plans? In fact there were so many other deficiencies that we objected and outlined these in our objection to the Principal Registrar of VCAT on 19 February 2008.
- ❖ But then the '**Landscape Plan**' that was referred to above was eventually served **at night** from a courier on a Motor Bike on **March 7<sup>th</sup>! One calendar month LATER?** How could they be served on the council at that time of the day? Also it was NOT until March 11<sup>th</sup>.that this Association were '*given*' an '*extra*' copy of the *Rendered Drawings*- but were never received from the Appellant! The other 'Plans' or 'Statements' have **never** been served to this day? This situation you would agree is ludicrous and is now, we find, typical of the way in which Mallesons working through their client (Woolworths) know of and are able to take advantage of '*this system*' by knowing of VCAT's apparent inability to police their own 'Orders' and 'Guidelines'. That is why we ask that this process be started anew with a notification back to the Shire of Yarra Ranges.
- ❖ More seriously our Expert Witness (Town Planner) Mr. Angus Witherby (Wakefield Planning) on March 4<sup>th</sup>.2008 was of the view when he wrote to our Association...*I will not be in a position to complete what I would consider to be a full and adequate expert witness statement until full documentation is available from the applicant*'... which was in turn relayed to the Registrar of VCAT on March 6. Also on this day we asked that because of these difficulties that the proceedings were so compromised that.. '*they should start again with a new application*'.. In other words due to the inadequacies and lack of materials in the 'Amended Plans' that we still believe do not comprise ..'*a coherent application*'.. without some recourse to a more detailed application that the present situation, which has been allowed to continue, would be extremely Prejudicial to our case.

- ❖ We are further of the belief that the *'Taleo Job Seeker Website' (Careers at Woolworths)* is extremely Prejudicial to the course of these Proceedings and is contemptuous in nature. Prior to last December it began offering *'Management Positions'* at the *'Mount Evelyn Safeway Store'!!* Does that mean that this Appeal Process has been so *'pre-judged'* and compromised that it is now a *'fait accompli'* in that Woolworths will be granted a Permit to proceed with the Development.? Just another example of how the Appellant has shown contempt for the VCAT process , Due process and Procedural fairness. Just another reason why this flawed process should be struck out!
- ❖ Since the 17<sup>th</sup> July 2007 the Mount Evelyn Community has endured a Process that was flawed from the outset. On 22<sup>nd</sup>. July 2007 this Association wrote it's first letter of complaint to the Senior Registrar when we found that the list of objectors had been *'culled'* from **182** objectors to **61**. **Two thirds** of the objectors had been left out of the very first Notification? How? Why? By the Second Hearing only **39 Objectors** were notified? At every stage MEEPPA Inc. wrote, emailed, faxed and rang VCAT with no result. In fact out of 10 major attempts through the balance of 2007 to have the situation rectified **NOT one of our formal letters of complaint was ever acknowledged or even answered** which compromised any procedural fairness and had denied our Community Natural Justice. In addition to this were numerous emails and telephone calls that always resulted in frustration either end which continues to this day. Why?
- ❖ Prior to October of last year it was obvious that the appeals for procedural fairness and due process were not being given any credence and so we applied to have the proceedings 'Struck out' in accordance with section 78 of the VCAT Act – so seriously flawed had the process become.
- ❖ At a Directions Hearing on October 19<sup>th</sup>. in front of Member Mark Dwyer a *secret letter'*? or *message of consent* asked for Woolworths name to be substituted for original Appellants name. Under PN.EP 1 (1.3) it clearly outlines *'Notification to All Parties'*. Yet even to this day **only one party has** ever seen this 'letter'/ message? Why wasn't this served on the other parties who had Standing in the Matter? This Association has full standing and was NOT served a Copy of this so called 'Consent Message'. Why? Why was that allowed to happen and why then was that 'Order' not *revoked* since the process from that day had been seriously compromised and we believe the proceedings were brought into disrepute?
- ❖ On October 2<sup>nd</sup> Damien Gardner (Mallesons) had stated in a letter to the small group of objectors who had not been 'culled' that *..'Woolworths would be buying the site ..in the near future'..* and there would be a *..'change of ownership'*. At a Public Meeting on March 12<sup>th</sup>. just passed the 'Property Manager' for Woolworths (Ralph Kemmber) stated publicly that.. *'Woolworths do not purchase properties'!*. And that further to this that *...'Woolworths do not construct premises'*. Was the Tribunal deliberately misled on that day for Woolworths to gain Standing in a fallacious way? In short was the actual truth presented to this Tribunal?

As the relevant and formally recognised Township Group in this matter MEEPPA Inc. acting on behalf of the concerns of the aggrieved populace of Mount Evelyn were requested to seek a Judicial Enquiry but in November of 2007 were then referred to the Attorney Generals Office. In turn the Attorney General's Office referred us to the 'Ombudsman's Office'. In February Mr Mumford referred us back to the Attorney Generals Office! On March 7<sup>th</sup>. 2008 in a lengthy Submission and Letter dated 27 February 2008... *"outlining serious malpractices and shortcomings in the"...."proceedings and guidelines at VCAT which has seemingly disenfranchised the legal and representative standing of the Mount Evelyn Community"*.. and for which it has to date displayed great contempt for this Community **was accepted** by the Attorney Generals Office to review and if necessary investigate the veracity of the claims made in it. **On advice this commenced more than a week ago.**

***Therefore if this Hearing commences or continues at this time it will be seriously jeopardised and compromised by a concurrent and parallel Review/ and or Investigation that is currently before the Attorney General about this very same 'Appeal' There can be no doubt that this would prejudice these proceedings and vice versa.***

Clearly this cannot be allowed to happen and I have been requested by my Community to present to you a *Petitionary Letter of Appeal* signed by 300 of the aggrieved Community members of Mount Evelyn at a Public Meeting held under the auspices of this Association on March 12<sup>th</sup>. demanding the immediate Abandonment of this Appeal Process due to the absence of Procedural Fairness, Due Process and the Denial of Natural Justice by unanimously passing the following **Resolution** (with Rationale attached)

*That we the undersigned residents (of Mount Evelyn) demand the immediate abandonment of the Appeal Process at the Victorian Civil & Administrative Tribunal (VCAT) Reference No. P1713/2007 due to the absence of Procedural Fairness, Due Process and the Denial of Natural Justice in that the Guidelines and Procedures of this Tribunal have not been adhered to, that Woolworths have not abided by a Legal Order made on the 29<sup>th</sup> August 2007 and demand that it either be 'struck out' or at the very least be treated as a 'New Application' to be presented back to our Democratically Elected Local Council for their consideration now that Amendment C 56 (DDO 2) has been incorporated into the Shire of Yarra Ranges Planning Scheme.*

## **RATIONALE**

We the undersigned Residents of Mount Evelyn, who have been continually appraised of the Woolworth's Ltd. development (P1713/2007) in Mount Evelyn and the amendments to the original application which are currently in front of the VCAT, support MEEPPA Inc.\* in the stand that they have taken against such an inappropriate development, and who have outlined these in their Statement of Objections to the Original Application as well as more recently the Amended Plans as relayed to VCAT from a 'Residential Foothills Township' and now further protected by Amendment C 56 (DDO) under the Shire Yarra Ranges Planning Scheme.

We therefore support fully the measures and arguments that MEEPPA Inc\* have advanced to date and which are contained in the Submission dated 28<sup>th</sup> February 2008 and served under Registered Seal on Mr. Hulls Attorney General Victoria on February 29<sup>th</sup>. 2008, and demand the Immediate Abandonment of this seriously Flawed and Compromised Appeal process to date at VCAT due to the serious breaches of the Gibson Order VCAT 29<sup>th</sup> August 2007, the refusal to comply with VCAT/ PNPE -1 'General Procedures' in particular Item 1. 3 'Notification to All Parties' occasioning the absence of procedural fairness, the absence of due process and therefore the denial of Natural Justice by the apparent contempt exhibited against this community, as fully outlined in the Submission of 28<sup>th</sup> February 2008, and either have the Appeal 'Struck Out' or at the very least, have the Amended plans returned forthwith to the Responsible Authority (Shire Yarra Ranges Council) being the only fair and non prejudicial course of action in these proceedings, and to be treated there as a completely 'New' Application" so that the process may begin anew and administered according to the correct processes.

*.. "That VCAT (and certain Legal Entities) can display such contempt for our Community in the way it has handled the ongoing proceedings through it's lack of adherence to the principles and guidelines of Natural Justice is a disgrace and it is these very guidelines that we wish to be investigated...."*

All Laws are enacted under the imprimatur of the people they represent.

All we have *ever* asked for is to be treated equally, *and with dignity*, before them.

I make this plea to you today on behalf of the People of Mount Evelyn who have ceded to me their authority to represent them today.

*Francis Mayson-Smith*

**PRESIDENT  
(MEEPPA)**

**BROUGHT TO YOU BY THE PROGRESSIVE PEOPLE OF MEEPPA – NURTURING THE COMMUNITY FIRST AND THEN THE ENVIRONMENT FOR NEARLY 100 YEARS.**

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