



Department of Environment, Land, Water and Planning

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Dear Mr Samartzis

BUILDING PERMIT WHERE PLANNING PERMIT REQUIRED

Further to your meeting with the Hon Richard Wynne MP, Minister for Planning, I have been requested to follow up on a matter regarding the Mornington Peninsula Shire Council's requirement that a planning permit be amended for new minor development which would otherwise be exempt from the need to obtain a planning permit under Clause 62.02 of the planning scheme.

While Clause 62.02 exempts minor buildings and works associated with a dwelling (such as a pergola, veranda and domestic swimming pool) from permit requirements, it does not override planning permit conditions. The ongoing effect of permit conditions was confirmed by the Supreme Court in *Benedetti v Moonee Valley City Council* [2005] VSC 434 where it held that (in summary):

- a permit condition continues to have effect while the owner of the land takes the benefit of the permit (that is, while the permitted development that triggered the permit remains on the land)
- had there have been a change in circumstances (for example, the demolition of that part of the development which triggered the need for a permit) leading to the owner no longer taking the benefit of the permit, the condition would cease to have effect.

Permit conditions continue to have affect long after the development is completed and regardless of whether the ownership of the land changes. Whether a permit needs to be amended to enable a development specified in Clause 62.02 will need to be determined on a case by case basis and will depend on what the permit allowed and the permit conditions.

The only case where this principle does not apply is where the planning permit is for subdivision. In that case the permit ceases to have effect once the subdivision is registered under the relevant provisions of the *Subdivision Act 1988*.

Before undertaking a development, it is important to search the planning history of the site to identify any planning permits that continue to regulate development on the land. I encourage you to make your members aware of this legal requirement, so they can advise their clients of the potential additional time that will be required to obtain the necessary planning permission.

Yours sincerely

18/10/18

John Phillips
Director Planning Systems