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In-House Memorandum
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Minor Works in Victorian Planning

The Victorian planning regime provides that any change to the natural condition of land constitutes 'works' and may require a permit in certain circumstances. 'Minor' works are frequently exempted from core planning controls. However the difference between 'works' and 'minor works' is not straight forward.

The High Court has noted, in the context of town planning, that the term 'work':

> *"is not of fixed connotation, but elastic or indefinite, and its meaning must depend on the actual language and context of the statutory provision in question."*[1]

'Works' is defined by section 3, P&E Act, to include:

> *"any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil."*[2]

In *Great Southern Property Managers Pty Ltd v Colac-Otway SC*[3], VCAT President Morris (as he was then) held that the significance of the activity is a relevant factor in determining whether the activity is within the legal meaning of 'works':

> *"Ultimately, I think this question must be answered by reference to [the s3, P&E Act definition] and the scheme, perhaps after applying a relish of common sense."*[4]

His Honour did not identify a line separating activities that are insufficient, suggesting the question needs to be resolved on a case by case basis[5].

As the meaning of 'minor works' is therefore not set in stone, any proposed work, even of a minor nature, needs careful consideration of its planning context before it is undertaken.

Cameron Algie and Robert Forrester
11 September 2014

[1] Parramatta City Council v Brickworks Ltd [1972] HCA 21 Gibbs J at [20]
[2] P&E Act, 1987, s3
[3] [2005] VCAT 1937
[4] Ibid, at [29]
[5] Ibid, at [36]

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