The responsible authority issued a notice of decision to grant a permit allowing for the demolition of an existing dwelling at Newport and the construction of three townhouses directly opposite Shell's facility.

The decision to grant a permit was made notwithstanding the recommendations of both WorkSafe and the Environment Protection Authority (EPA), to which the responsible authority had referred the application, both of which had counselled against granting the permit. The responsible authority took the view that as neither the EPA nor WorkSafe were referral authorities under the applicable Hobsons Bay Planning Scheme, their recommendations need not be considered.

The application to review the responsible authority's decision was made under s 82 of the *Planning and Environment Act 1987* (Vic).

In making its decision, the Tribunal set out to consider two issues in particular:

- whether or not the EPA recommended buffer distance requirements should be considered
- whether a permit should be issued to develop additional dwellings on a site in close proximity to a Major Hazard Facility.

The Tribunal determined that the proximity of the proposed dwellings to a 'major hazard facility' accompanied by an increase of two dwellings on the land in a residential zone was unacceptable.

In finding in favour of Shell, the Tribunal concluded that permitting the construction of the dwellings would introduce a 'very small increased marginal societal risk' [35] and that such a decision may 'set a precedent for similar developments in the area' [36].

The Tribunal considered the EPA document *Recommended Buffer Distances for Industrial Residual Air Emissions, AQ 2/86,* which was a reference document in the planning scheme to be an important source for guidance. AQ 2/86 recommends a buffer distance of 300 metres for fixed roof tanks, of which there are a number at the Shell facility, and sensitive uses such as the review site. The review site is well within the 300 metre buffer distance, however so are other dwellings already built in the surrounding area.

The Tribunal did not consider the existence of other dwellings in breach of AQ 2/86 to be a reason to disregard the document entirely. Rather, the Tribunal reasoned that as AQ 2/86 states that sensitive use development should not proceed unless site-specific variation of the recommended distance is approved by EPA, and given that the EPA approved no such variation, the Responsible Authority must give some weight to the EPA's recommendation.

The Tribunal sought to avoid the 'tyranny of small decisions' scenario, where a series of small decisions avoiding small changes beyond the current situation prevent the implementation of a policy.

Western Australia

Hunter v The Minister for Planning [2012] WASC 247

by Joe Freeman and Ainsley Reid

Mr Richard Hunter, a Goolarabooloo Law Boss, has failed in a Supreme Court challenge made in relation to amendments made by the Minister for Planning to a Shire of Broome Local Interim Development Order, related to the Browse LNG development.

In *Hunter v The Minister for Planning* [2012] WASC 247 Mr Hunter submitted that the Minister had made the amendments beyond power for an improper purpose, arguing that the amendments were made to thwart proceedings he had on foot (against the Shire of Broome, Woodside Energy and the Kimberley Joint Development Assessment Panel) in relation to the Woodside Petroleum LNG development proposed for James Price Point. The amendments made by the Minister would allow for the development to continue irrespective of the outcome of Mr Hunter's other litigation. Chief Justice Martin refused to grant the order on the basis that no evidence could support an inference that the amendment was made for any reason other than the regulation of the development of the land at James Price Point.