

MINISTERIAL POWERS OF INTERVENTION IN PLANNING AND HERITAGE MATTERS

REASONS FOR DECISION TO EXERCISE POWER OF INTERVENTION

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL APPLICATION FOR REVIEW P481/2008

The *Planning and Environment Act 1987*, the *Heritage Act 1995* and the *Victorian Civil and Administrative Tribunal Act 1998* provide for the intervention of the Minister for Planning in planning and heritage processes.

In exercising my powers of intervention, in accordance with the *Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note*, I have agreed to:

- Make publicly available written reasons for each decision, including an explanation of how the circumstances of the matter respond to the Practice Note and the legislative criteria for that action.
- Provide a report to Parliament at least every twelve months detailing the nature of each intervention.

REQUEST FOR INTERVENTION

1. The request for intervention has been made by the Alex Fraser Group, the applicant in this matter.
2. Kingston City Council and the Defenders of the South East Green Wedge Inc also requested the matter be called in, prior to the application for review being lodged with the Victorian Civil and Administrative Tribunal (VCAT).

WHAT POWER OF INTERVENTION IS BEING USED?

3. Clause 58 of Schedule 1 of the Victorian Civil and Administrative Tribunal Act 1998 enables the Minister for Planning to call in a proceeding for review of a decision under the *Planning and Environment Act 1987*, from VCAT.
4. In seeking to exercise this power, Clause 58(1) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* requires that the Minister for Planning must satisfy him or herself that:
 - The proceeding raises a matter issue of policy; and
 - The determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

BACKGROUND

5. The Alex Fraser group has requested that I 'call in' planning permit application (KP881/07) which is currently before VCAT. The application against failure to determine was lodged with VCAT on 19 February 2008 (VCAT ref P481/2008). A hearing date for this matter has been fixed for 23 June 2008.

6. The planning permit application is for the use and development of land at 293-315 Kingston Road, Clarinda, for the purpose of a refuse transfer station in conjunction with a materials recycling facility, the display of floodlit business identification signage, reduction in car parking requirements, removal of native vegetation and alteration of access to a road zone.
7. On 31 October 2007, I decided to grant a planning permit to allow Alex Fraser to remain at its present site in Dingley for 18 months, until 30 April 2009. This was to allow enough time for Alex Fraser to apply to Council so that the permit application would proceed through the normal statutory process under the *Planning and Environment Act 1987*.
8. At the time, I agreed to monitor progress of the application and take further action, if necessary.
9. As the matter is now before VCAT, and Alex Fraser's operation at Dingley cannot continue beyond 30 April 2009, the timing of a decision of the application has **BECOME URGENT**.

CONSULTATION

10. Despite the matter now being before VCAT, Kingston City Council officers have advised that Council would still support the call in by the Minister.

REASONS FOR INTERVENTION

11. The *Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note* requires the Minister for Planning to meet certain criteria in the exercise of Ministerial powers of intervention. As an overriding consideration, Ministerial powers will only be exercised having regard to and within the confines of, the legislative provision in question.
12. I am satisfied that the circumstances for Ministerial intervention and the nature of the proposed amendment satisfy the relevant criteria in the *Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note* on the following basis:
 - Criterion 1: The matter will be one of genuine State or regional significance, as the determination of the application may have a substantial effect on achievement or development of State or regional planning objectives.
 - Criterion 4: The matter will raise issues of fairness or public interest, as there is a need for urgency and the public interest would be served by immediate action.
13. In accordance with the requirements of Clause 58 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, I consider that –
 - The facility in question is a waste management and recycling facility of State interest, and the matter raises major policy issues around the use of green wedges, and the interpretation and administration of green wedge planning provisions.
 - Determination of the proceeding may have a substantial effect on the ability of State and local governments to provide for the fair, orderly, economic and sustainable use, and development of land.

DECISION

14. I have therefore decided to call in the application from the Victorian Civil and Administrative Tribunal pursuant to Clause 58(2)(a) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*.

A handwritten signature in black ink, appearing to read 'J. Madden', is written over the printed name of Justin Madden MLC.

JUSTIN MADDEN MLC
Minister for Planning

Date: 15 MAY 2008