

MINISTERIAL POWERS OF INTERVENTION IN PLANNING AND HERITAGE MATTERS

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.

This practice note sets out the circumstances in which the Minister will consider exercising those powers of intervention and the principles that will apply in considering a request for intervention so that the use of intervention powers is both transparent and accountable.

WHAT POWERS DOES THIS PRACTICE NOTE APPLY TO?

This practice note applies to the following:

- power to amend a planning scheme, with exemption from notice requirements, or to expedite an amendment to a planning scheme, under section 20(4) of the *Planning and Environment Act 1987*;
- power to expedite an amendment to a planning scheme under section 185A of the *Planning and Environment Act 1987*;
- power to call-in a planning permit application yet to be decided by a responsible authority under sections 97B of the *Planning and Environment Act 1987*;
- power to call-in a matter before the Victorian Civil and Administrative Tribunal under clause 58 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*;

- power to call-in recommendations for registration and permit appeals before the Heritage Council or the Victorian Civil and Administrative Tribunal under sections 43 and 78(1)(a) & (2) of the *Heritage Act 1995*.

HOW WILL THE MINISTER USE THESE POWERS?

In considering using powers of intervention, the Minister will:

- where a person other than the Minister proposes the intervention, expect the proposal to be made in writing and to identify the basis on which the Minister should intervene, addressing the criteria set out in this practice note;
- where a person other than a planning authority or responsible authority proposes the intervention, expect that person to have consulted the relevant planning authority or responsible authority about the proposal;

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- expect the planning authority or responsible authority and other affected parties to have attempted to resolve any dispute and clearly identify any outstanding matters;
- seek to consult the relevant planning authority or responsible authority, where it would otherwise have a decision-making role in relation to the matter;
- examine each case on its merits, including consideration of the need to consult with affected parties and the need to seek independent expert advice;
- act so as not to unreasonably delay a decision on the matter.

In using powers of intervention, the Minister will:

- make publicly available written reasons for each decision, including an explanation of how the circumstances of the matter responded to this 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.

WHEN WILL THE MINISTER CONSIDER USING THESE POWERS?

While all the circumstances in which intervention may be considered cannot be prescribed, the following criteria will usually be relevant:

1. The matter will be one of genuine State or regional significance. Such situations may include, for example, those:
 - where the determination of the application may have a substantial effect on achievement or development of State or regional planning or heritage objectives;
 - which raise a major issue of State or regional policy or public interest such as the implementation of Melbourne 2030 objectives;
 - which could have significant effects beyond their immediate locality.
2. The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.
3. The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme).

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4. The matter will raise issues of fairness or public interest, where:
 - the mechanisms of the planning process have created a situation that is unjust, unreasonably causes hardship or is clearly in error;
 - anomalous provisions apply and the valid intent is clearly evident or simple inconsequential correction is required;
 - there is a need for urgency and the public interest would be served by immediate action;
 - the matter is unlikely to be reasonably resolved by the processes normally available.
5. The matter requires co-ordination to facilitate decision-making by more than one agency.

As an overriding consideration, Ministerial powers will only be exercised having regard to and within the confines of, the legislative provision in question.

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