

**MINISTERIAL POWERS OF INTERVENTION IN PLANNING
AND HERITAGE MATTERS**

**REASONS FOR DECISION TO EXERCISE POWER OF
INTERVENTION**

**CALL-IN OF VICTORIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL APPLICATION FOR REVIEW P826/2009**

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 was made by Mr Ken Woolley on behalf of the Oaklands Hill Windfarm Pty Ltd for land at Menzies Lane and Glenthompson - Caramut Road, Glenthompson (CA 77B, Parish of Yuppeckiar; Lot 1 on TP575263; CA 9B, Parish of Nanapundah).

WHAT POWER OF INTERVENTION IS BEING USED?

2. Clause 58 (2) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act) enables the Minister for Planning to call-in a proceeding for review of a decision under the *Planning and Environment Act 1987* (PE Act), from the Victorian Civil and Administrative Tribunal (VCAT).
3. In seeking to exercise this power, Section 58(1) of Schedule 1 of the VCAT Act requires that the Minister for Planning must satisfy himself or herself that:
 - The proceeding raises a major issue of policy; and
 - The determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

BACKGROUND

4. The VCAT proceeding relates to a planning permit application for removal of native vegetation required to construct roads on private property associated with a wind energy facility comprising of 43 wind turbines.
5. On 30 October 2008, I issued planning permit 2007/0370 to allow the land to be used and developed for a wind energy facility, including associated earthworks.

6. The independent Panel appointed to consider submissions to planning permit application 2007/0370 considered the impacts of native vegetation removal, but this was not part of the proposal at that time and could not be included in the permit.
7. The Southern Grampians Shire Council (the Council) is the responsible authority for planning permit applications to remove native vegetation.
8. Oaklands Hill Pty Ltd applied to the Council (Ref TP/124/2008) for a permit to remove 1.1 hectares of native vegetation to allow for the construction of wind energy facility approved under planning permit 2007/0370.
9. The application was advertised and the Council received 5 objections.
10. Notice of the application was given to the Department of Sustainability and Environment (DSE). DSE did not object to the application but recommended permit conditions.
11. On 13 March 2009, the Council issued a Notice of Decision (NOD) to Grant a Planning Permit subject to conditions, primarily relating to ongoing management.
12. The Grampians and Glenthompson Landscape Guardians Inc (the objector) applied to VCAT on 27 March 2009 to review the NOD.
13. VCAT has fixed an administrative mention of the proceeding 22 June 2009. A formal hearing date is yet to be set, if required.

CONSULTATION

14. The views of the various parties were identified through the planning permit process for use and development of the wind energy facility, which included a public Panel hearings and independent review process, and through the planning permit application process for the removal of native vegetation.

REASONS FOR INTERVENTION

15. 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.
16. I am satisfied that the circumstances for Ministerial intervention and the nature of the proposal 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 2: The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.
 - 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.

17. In accordance with the requirements of Section 58 (1) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, I consider that –
- The proceeding raises a major issue of policy in that the proposal relates to Federal and State policies and strategies on renewable energy and climate change.
 - The determination of the proceeding may have a substantial effect on the achievement or development of State planning objectives, including renewable energy, and environmentally sustainable development.
18. In particular, the proposal will achieve the objectives of planning in Victoria as outlined in section 4 of the *Planning and Environment Act 1987*. In particular, section 4(1)(a), by providing for economic and sustainable use and development of land in a fair manner, section 4(1)(f), by facilitating development in accordance with the objectives in the preceding sections, and section 4(1)(g), in that it balances the present and future interests of all Victorians. The proposal will also balance the objectives of the planning framework, including the objectives in section 4(2)(e) and 4(2)(g) of the Act.
19. Renewable energy is a major issue of Federal and State government policy. Relevant strategies and policies include the *National Strategy for Ecologically Sustainable Development 1992*, *National Greenhouse Response Strategy 1998*, *Our Environment Our Future 2006*, and *Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria 2003*.
20. The proposal is consistent with the State Planning Policy Framework, including Clauses 15.14 Renewable Energy which encourages wind energy facilities.

DECISION

21. I have therefore decided to give notice to the Principal Registrar of VCAT pursuant to Clause 58(2) of Schedule 1 of the VCAT Act to call in VCAT proceeding P826/2009 for determination by the Governor in Council.


JUSTIN MADDEN MLC
Minister for Planning

Date: - 8 JUL 2009