

MINISTERIAL POWERS OF INTERVENTION IN PLANNING AND HERITAGE MATTERS

REASONS FOR DECISION TO EXERCISE POWER OF INTERVENTION

AMENDMENT C53 TO THE BOROONDARA PLANNING SCHEME

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 Minister for Community Services, Sherryl Garbutt MP, in a letter dated 5 November 2003, has requested me to prepare, adopt and approve an amendment to the Boroondara Planning Scheme utilising my powers under Section 20(4) of the *Planning and Environment Act 1987* (the Act) to facilitate the redevelopment of the Kew Residential Services site, Kew.

WHAT POWER OF INTERVENTION IS BEING USED?

2. I have decided to exercise my powers to prepare Amendment C53 to the Boroondara Planning Scheme and to exempt myself from all the requirements of Sections 17, 18 and 19 of the Act and the regulations in respect of this Amendment.
3. The amendment applies to the Kew Residential Services (KRS) land, Princess Street, Kew. The land is in two lots and is described as Crown Allotments 59Q and 59R, Parish of Boroondara, County of Bourke. The amendment:
 - Makes the Minister for Planning the responsible authority for the administration and enforcement of the Boroondara Planning Scheme for the land.
 - Changes the zoning of the land from a Public Use Zone 3 Health & Community to a Residential 1 Zone.
 - Applies the Development Plan Overlay Schedule 3 - Kew Residential Services (DPO3) to the land.
 - Applies the Heritage Overlay to a portion of the land.
 - Applies the Vegetation Protection Overlay Schedule 2 - Kew Residential Services (VPO2) to a portion of the land.
 - Incorporates the Kew Residential Services Urban Design Framework, October 2003 in the Boroondara Planning Scheme by inserting this document into the list of incorporated documents in the Schedule to Clause 81.

4. Section 20(4) of the *Planning and Environment Act 1987* enables the Minister for Planning to exempt an amendment which the Minister prepares from any of the requirements of sections 17, 18 and 19 of the Act or the regulations. Section 20(4) can therefore operate to expedite that amendment.
5. In seeking to exercise this power, Section 20(4) of the Act requires that the Minister must consider that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

BACKGROUND

6. In May 2001, the State Government announced the proposed redevelopment of Kew Residential Services (KRS), with the aim that the site be redeveloped to improve the quality of life for the KRS residents by re-housing them in better accommodation. Some 100 residents will move to new homes on the KRS site and over 350 residents will be moved to new homes in other parts of Melbourne and Victoria, closer to family and other existing networks.
7. The initial stages of the planning and design process for the KRS site was undertaken under the auspices of the Boroondara City Council and involved the preparation of an Urban Design Framework (UDF) to set out the broad guidelines for the development and use of the site, based on analysis of the site's features and context. A Working Group was established to assist with the preparation of the UDF which comprised community representatives, a Kew Parents Association representative, Councillors and Council Officers from the Boroondara City Council and senior officers from the Department of Human Services and the Department of Sustainability and Environment.
8. For over 18 months, the Working Group considered a range of issues including the existing features of the site, the strengths, features and characteristics of the surrounding area, community facilities, and access and connection to the surrounding neighbourhoods. The Working Group subsequently developed a set of principles, which are designed to capture important environmental, social and planning aspects for the future of the site.
9. The draft UDF was placed on public exhibition. The consultation process undertaken by the Working Group included the publication of a periodic newsletter, information days at the site, public displays at Boroondara City Council, direct mail-out to residents and advertisements in a local newspaper.
10. In August 2003, the Working Group forwarded its draft UDF to the Boroondara City Council. The final UDF was subsequently considered and approved by Council subject to significant variations. These variations include a reduction in the overall maximum height of buildings on the site and the requirement that 50% of the site be public open space, excluding roads and road reserves, and modifications to the core objectives and principles of the UDF.
11. Council has subsequently prepared and placed on exhibition Amendment C38 to the Boroondara Planning Scheme. The Amendment proposes to rezone the site from a Public Use Zone to a Residential 1 Zone and apply a Design and Development Overlay to the site to specify the design objectives and requirements for the future development of the site. The Amendment will be on public exhibition until 12 December 2003.
12. VicUrban, who has been engaged by the Department of Human Services as a facilitator, has responded to Council's concerns by modifying the UDF to specify design objectives and requirements for the site including a minimum of 27% open space.
13. Minister Garbutt has requested that the modified Urban Design Framework, October 2003 drafted by VicUrban be used as the basis for the planning scheme amendment.

CONSULTATION

14. The KRS residents have been involved in a detailed consultation process over a two-year period about the redevelopment of the site and their needs as part of the planning for “off-site” community housing.
15. The development of an Urban Design Framework (UDF) for the future redevelopment of the site, coordinated by the Boroondara City Council, has been a public process, with community representation on the Working Group preparing the UDF.
16. My approval of a future Development Plan for the KRS site will include the consideration of the views of Council.

REASONS FOR INTERVENTION

17. 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.
18. 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:
 - Criteria 1 of the Practice Note states, in part: “The matter will be one of genuine State or regional significance”. Amendment C53 to the Boroondara Planning Scheme has a direct impact on the State Government’s ability to deliver its policy on the KRS site. This policy has been enunciated in *Growing Victoria Together*, in its 2002 election policy statement, Access, Support and Participation – Labor’s Plan for People with a Disability, and The Victorian State Disability Plan 2002-2012 which outlined the Government’s commitment to close Kew Residential Services and build new homes for residents.
 - Criteria 2, which states: “The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.” The KRS residents have been involved in a detailed consultation process over a two-year period about the redevelopment of the site and their needs as part of the planning for “off-site” community housing. The development of an Urban Design Framework (UDF) for the future redevelopment of the site, coordinated by the Boroondara City Council, has been a public process, with community representation on the Working Group preparing the UDF.
 - Criteria 4, which states: “The matter will raise issues of fairness or public interest.” The achievement of the Government’s objectives is likely to be jeopardised due to excessive delays (including extensive delays in the preparation of the UDF). The amendment is necessary to ensure that the new housing for KRS residents is provided in a timely manner.

19. Section 20(4) of the Act enables the Minister for Planning to exempt an amendment which the Minister prepares from any of the requirements of sections 17, 18 and 19 of the Act or the regulations. Section 20(4) of the Act can therefore operate to expedite that amendment.

20. I am satisfied that -

- compliance with any of the requirements of sections 17, 18 and 19 of the Act is not warranted; and
- the interests of Victoria make such an exemption appropriate

because:

- the proposal, as articulated by the UDF, has been through a comprehensive consultation process and the views of the Council and local community are known; and
- the matter is of genuine State significance as the closure of Kew Residential Services and the relocation of its residents to new housing is a key Government commitment.

DECISION

21. I have therefore decided to exercise my power to prepare Amendment C53 to the Boroondara Planning Scheme and to exempt myself from all the requirements of sections 17, 18 and 19 of the *Planning and Environment Act 1987* and the regulations in respect of this Amendment.

MARY DELAHUNTY, MP

Minister for Planning

Date: 12 November 2003