

MINISTERIAL POWERS OF INTERVENTION IN PLANNING AND HERITAGE MATTERS

REASONS FOR DECISION TO EXERCISE POWER OF INTERVENTION

BOROONDARA PLANNING SCHEME

AMENDMENT C65

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 Department of Human Services has requested this intervention by the Minister for Planning.

WHAT POWER OF INTERVENTION IS BEING USED?

2. I have decided to exercise my powers to prepare Amendment C65 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* (the Act) and the regulations in respect of this amendment.
3. The amendment modifies Schedule 3 to the Development Plan Overlay (affecting the Kew Residential Services site) by introducing an exemption from the requirement that a building must not exceed the maximum building height shown for areas on the 'Building Envelopes and Setbacks' plan that is part of the *Kew Residential Services Urban Design Framework, October 2003*, providing it is in accordance with the *Walker Development Plan – Kew, Building Height Envelope Plan, March 2006*.
4. The amendment also introduces the *Walker Development Plan – Kew, Building Height Envelope Plan, March 2006* as an incorporated document into the Planning Scheme.
5. 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) can therefore operate to expedite that amendment.
6. 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

7. In November 2003, the Kew Residential Services (KRS) site was rezoned to a Residential 1 Zone and a Heritage Overlay, Development Plan Overlay and Vegetation Protection Overlay were applied to the site to prepare the land for sale and ultimately redevelopment.
8. The Development Plan Overlay (DPO) refers to the *Kew Residential Services Urban Design Framework, October 2003*. This Urban Design Framework provides an overall concept plan for the redevelopment of the site, to ensure that the site is developed in an integrated manner and in response to its features and context.
9. The Urban Design Framework includes a 'Building Envelopes and Setbacks' plan, which provides for a range of housing types and forms and makes reference to the maximum number of storeys in various precincts across the site. The 'Building Envelopes and Setbacks' plan expresses the maximum height of each developable area numerically, ranging from two to five storeys.
10. Schedule 3 to the DPO requires a development plan to be prepared to the satisfaction of the responsible authority, and this development plan must be generally in accordance with the *Kew Residential Services Urban Design Framework, October 2003*. A permit that is granted for the site must be generally in accordance with the development plan and therefore the Urban Design Framework.
11. Schedule 3 to the DPO also requires that a building must not exceed the maximum building height shown for areas on the 'Building Envelopes and Setbacks' plan. To enable me to consider approval of the *Walker Development Plan – Kew, December 2005*, which has been prepared through an extensive consultation process, it is necessary to modify Schedule 3 to the DPO. The modification proposes to introduce an exemption from the requirement that a building must not exceed the maximum building height shown for areas on the 'Building Envelopes and Setbacks' plan that is part of the *Kew Residential Services Urban Design Framework, October 2003*, providing it is in accordance with the *Walker Development Plan – Kew, Building Height Envelope Plan, March 2006*. This *Walker Development Plan – Kew, Building Height Envelope Plan, March 2006* is the building height envelope plan that forms part of the *Walker Development Plan – Kew, December 2005*.

CONSULTATION

12. Consultation has occurred initially through the preparation of the *Kew Residential Services Urban Design Framework, October 2003* and more recently in the preparation of the *Walker Development Plan – Kew, December 2005*.

REASONS FOR INTERVENTION

13. 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.
14. 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 2 – The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.

Legislative criteria for exercising power of discretion

15. 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.

16. 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 this part of Victoria make such an exemption appropriate

because:

- The preparation of the KRS site for sale and redevelopment has followed a comprehensive process, including the rezoning of the land, the imposition of overlay controls and the preparation of an Urban Design Framework in consultation with relevant authorities and more recently in the preparation of a development plan for the site. In this respect, the matter of building envelopes and the views of all affected parties have been given careful consideration through the preparation of the Urban Design Framework and through the preparation of a development plan for the site.

DECISION

17. I have therefore decided to exercise my power to prepare Amendment C65 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.

ROB HULLS MP
Minister for Planning

Date: 7 March 2006