

MINISTERIAL POWERS OF INTERVENTION IN PLANNING AND HERITAGE MATTERS

REASONS FOR DECISION TO EXERCISE POWER OF INTERVENTION

AMENDMENT C9 GLENELG PLANNING SCHEME

AMENDMENT C9 MOYNE PLANNING SCHEME

PORTLAND WIND ENERGY PROJECT

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. No other person other than the Minister has proposed or requested this intervention.

WHAT POWER OF INTERVENTION IS BEING USED?

2. I have decided to exercise my powers to prepare Amendment C9 to the Glenelg Planning Scheme and Amendment C9 to the Moyne 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.
3. The amendment incorporates the document 'Portland Wind Energy Project: Cape Bridgewater Wind Energy Facility, Cape Nelson Wind Energy Facility, Cape Sir William Grant Wind Energy Facility, April 2003', into the Glenelg Planning Scheme. The amendment also incorporates the document 'Portland Wind Energy Project: Yambuk Wind Energy Facility, April 2003', into the Moyne Planning Scheme
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. The Portland Wind Energy Project (PWEP) involves the integrated development of wind energy facilities at four sites (Capes Bridgewater, Nelson and Sir William Grant in Glenelg Shire and a site near Yambuk in Moyne Shire). The scale of the proposal (120 wind turbine generators) is intended to provide the catalyst for establishing a wind turbine manufacturing industry in regional Victoria.
7. On 15 August 2002, I released my Assessment of PWEP under the *Environment Effects Act 1978* along with the report of the independent Panel appointed to consider the EES and planning permit applications lodged for the approval of the wind energy facilities.
8. My assessment recommended the relocation of seven turbines proposed at the tip of Cape Bridgewater and four of the turbines proposed in the northern part of Cape Bridgewater. It also encouraged the exploration of potentially suitable alternative sites at Cape Sir William Grant and in the northern part of Cape Nelson.
9. I also stated that planning approvals will not be granted for the four sites until satisfactory evidence is provided that the wind turbine manufacturing facility associated with the proposal will proceed in Victoria.
10. In October 2002, the Commonwealth Minister for Environment and Heritage approved the proposal under the *Environment Protection and Biodiversity Conservation Act 1999*.
11. After reviewing the financial aspects of the project, PHL concluded that the original PWEP proposal without the seven turbines proposed at the tip of Cape Bridgewater would not be viable. Consequently PHL has modified the proposal taking into account my assessment, changes in turbine technology and opportunities to revise the turbine layouts at Cape Bridgewater and Cape Nelson to achieve higher energy production. As recommended in my assessment, PHL has investigated additional sites for turbines at Cape Sir William Grant and in the northern part of Cape Nelson. The investigations at Cape Sir William Grant covered freehold land as well as Crown land that is not reserved under the *National Parks Act 1975*.
12. On 4 April, Pacific Hydro Ltd (PHL) submitted the document *Portland Wind Energy Project - Information for Planning Approval*, dated 4 April 2003 to me requesting planning approval for the revised PWEP proposal.
13. The project demonstrates compliance with the *Policy and Planning Guidelines for development of wind energy facilities in Victoria, 2002* (the Wind Energy Guidelines). In particular, the project (with modified layouts) will:
 - contribute to the Government policy objectives relating to the provision of renewable energy;
 - have a substantially reduced impact (in comparison to the EES layout) on sensitive landscapes including the tip of Cape Bridgewater and Bridgewater Lakes;
 - comply with standards for noise and shadow flicker and will utilise mitigation measures such as landscaping to reduce visual impacts on residences;
 - meet the requirements of the Civil Aviation Safety Authority Australia; and
 - not have significant impacts on flora and fauna values by implementation of a comprehensive Environment Management Plan, which (amongst other things) provides standards for protecting significant native vegetation and avifauna.
14. The PWEP project has been preceded by detailed investigation, public consultation, independent review and refinement. Whilst the EES has informed the final detail of the project, it is not an approvals process in itself. This approval was initially sought via four planning permit applications, however changes to the layout, turbine numbers and specifications has necessitated a different approvals mechanism. Site specific amendments to the Moyne and Glenelg Planning Schemes will deliver approvals in a timely manner.

15. PHL's analysis of impacts is satisfactory and is generally consistent with the findings of my EES Assessment. Whilst the changed layouts may have different impacts on some residences in proximity to wind turbines, these are considered acceptable within the context of the *Wind Energy Guidelines*.
16. PHL has provided a satisfactory assurance to the Government that it will establish a wind turbine manufacturing facility in Victoria.

CONSULTATION

17. Owners and occupiers of land in the vicinity of the PWEP sites were given the opportunity to comment on the original EES proposal. They have not been given the opportunity to formally comment on the final project layout, however PHL has consulted most landowners in preparing the layout revisions.

REASONS FOR INTERVENTION

18. 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.
19. 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 is one of genuine State and regional significance and public interest.
 - Criterion 4 – there is a need for urgency and the public interest will be served by immediate action.

Legislative criteria for exercising power of discretion

20. 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:
 - the interests of this part of Victoria make such an exemption appropriatebecause:
 - the views of the community have been reasonably considered by an independent Panel;
 - the intervention will be consistent with my Assessment of the project under the *Environment Effects Act 1978* and the *Policy and Planning Guidelines for development of wind energy facilities in Victoria, 2002*; and
 - the intervention will facilitate a project that will be a significant contributor towards the Victorian and Commonwealth Government's goals for promoting the growth and development of renewable energy, and will be a significant opportunity for rejuvenation of Portland's economy, population growth and social outlook.

DECISION

21. I have therefore decided to exercise my power to prepare Amendment C9 to the Glenelg Planning Scheme and Amendment C9 to the Moyne 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.

THE HON. MARY DELAHUNTY, MP

MINISTER FOR PLANNING

Date: **29 April 2003**