

(b) STATUTORY PROVISIONS:

The scheme is permissible by virtue of Section 17 (1C) of the Town and Country Planning Act 1961 which states that uses or developments contrary to the stated provisions of an Interim Development Order are not to be commenced without a permit being granted by the responsible authority.

The current I.D.O. in force in the area allows for a minimum 3 acre subdivision in areas under the control of the Kyneton Waterworks Trust and with water available and 6 acre minimum subdivisions in areas where no water is available. This application seeks by supplying its own water to comply with the spirit of the 3 acre minimum provisions and utilises the precedents established by schemes subdivided under the Cluster Titles Act whereby slightly greater densities than normally in force in the area are allowed because of the more efficient land usage possible under that Act.

Thus it is held that 2 acre allotments with thirty acres of private open space and an integrated pedestrian system is a preferred usage of the land than either three acre lots or six acre lots with no open space provisions and, in the current usage, no reticulated water or fire fighting system, no communal areas for construction of tennis courts or other facilities, no water storage for recreational purposes or for usage during prolonged drought, and once the six acre lots are fenced, no areas that would provide an opportunity for continued habitation by native wildlife.

The provisions of the Cluster Titles Act 1974 cover all the usages sought by this application and a copy of the relevant section of the Town and Country Planning Act is included herein.

1961.

Town and Country Planning.

No. 6849

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15. The Board may with the consent of the Minister enter into agreements with the council of any municipality or the councils of any two or more municipalities to prepare and submit for approval a planning scheme at the expense of the municipality or the municipalities for any area of land within the municipal district or districts of the municipality or municipalities (as the case may be).

Power of Board to enter into agreements with councils for preparation of schemes.
No. 6396 s. 13.

16. (1) Where pursuant to this Act the Board is preparing or has prepared a planning scheme, then, notwithstanding that the Board is not the responsible authority for the enforcement and carrying out of the scheme, the Board may prior to notice of approval of the scheme being published in the *Government Gazette* exercise any of the powers and perform any of the functions or duties in respect of the enforcement and carrying out of the scheme that the responsible authority for such enforcement and carrying out is entitled to exercise or perform prior to the approval of the scheme.

Special powers of the Board.
s. 16
repealed by
No. 7676 s. 10
(2) (a)
and a new
s. 16
re-inserted by
No. 7676
s. 2 (1).

(2) When in a case referred to in sub-section (1) the Board exercises any such power or performs any such function or duty that the responsible authority is entitled so to exercise or perform, the Board shall in respect of that power function or duty act as and be deemed to be the responsible authority.

Interim Development Orders.

17. (1) After a date determined and notified by the responsible authority in the manner prescribed as being the date of the commencement of the preparation of a planning scheme, and before the approval of the scheme, the responsible authority may with the approval of the Governor in Council (given after consideration by the Minister of a report by the Board thereon) make an interim development order regulating restricting restraining or prohibiting the use or development of any land within any area to which the scheme relates to the extent to which it would be lawful for the scheme to do so and the order shall subject to this section have effect accordingly.

Making and effect of Interim development orders.
s. 17
amended by
No. 6976 s. 20,
7005 s. 2.
ss. (1)
substituted by
No. 7676 s. 11
(a).

(1A) The responsible authority may in accordance with this Act during the operation of an interim development order grant permits allowing any use or development of any land within the area to which the order relates.

Power to grant permits to use or develop land.
ss. (1A)
inserted by
No. 7676 s. 11
(a).

(1b) A permit shall not be granted under sub-section (1A) with respect to any use or development expressly prohibited by the order unless the Minister after considering a report from the Board approves or the responsible authority is the Board of Works.

ss. (1b)
inserted by
No. 7676 s. 11
(a).

(1c) No use or development of any land shall be commenced after the coming into operation of an interim development order or any amendment or modification thereof unless the use or development is permitted by the order or (as the case may be) the order as amended or modified or a permit therefor has been granted by the responsible authority.

Use or development contrary to order not to be commenced without permit.
ss. (1c)
inserted by
No. 7676 s. 11
(a).