



# Frankston Beach Association Inc.

*Preserving the beach for all to use*

## The Failure of the Planning Minister to undertake a Statutory Planning Scheme Amendment Process and the denial of Third Party Rights, Procedural Fairness and Natural Justice and undermining the role of VCAT in the Planning Process

Approval by the Planning Minister of a significant Amendment to the Frankston Planning Scheme (Amendment C50) and exercising his powers prescribed by Section 20(4) of the Planning and Environment Act 1987 to exempt himself from the requirements of sections 17, 18 and 19 of the Act and justifying his decision on advice provided by a Priority Development Panel, is of concern to numerous community groups and individuals.

The failure to appoint a Statutory Planning Panel to review the proposed 'C50 Amendment', or alternatively to require a formal planning application from a developer with public exhibition and third party rights and review under VCAT, contravenes previous Planning Ministers' advice and his own advice given to Parliament in response to a question on notice and arguably fails to conform with the intent of the legislation.

The Frankston Beach Association (FBA) contends that the Minister by substituting a Priority Development Panel as a Planning Panel has abrogated his responsibility to require the C50 Amendment to the Frankston planning scheme to undergo a statutory planning process.

In support of this argument, the FBA submit the following information.

The 'C50 Amendment' provides for a marina more than 6 ha. larger in size than that previously approved, to be built at the base of Olivers Hill in Frankston. The Amendment removes the upper limit of land that can be reclaimed from the seabed and includes new and enlarged commercial and industrial activities and facilities over and above the scope previously recommended by the 2003 Planning/Advisory Panel and approved by the Planning Minister of that time.

The C50 Amendment will allow significant changes to the scope of the marina approved in 2003, **without undergoing any statutory planning process or environmental assessment.** These changes include; an increase in size of the marina from 15.8 ha to 22 ha.; completely removing the upper limit of land that may be reclaimed from the sea (previously limited to 5.4 ha.); **the construction and operation of a 400 boat high-rise stacked dry storage building (previously specifically and expressly prohibited); provision of a 60 unit hotel; an increase in the retail area from 500 to 2,000 square metres; with all of these facilities being developed on the reclaimed marina land projecting into Port Phillip Bay.** Furthermore, **the upper size restriction on boats using the proposed marina has been removed.**

The large increase in size of the allowable marina to 22 ha. will cause significant additional interference to the coastal processes, to the littoral sand drift and to the natural wave action off Olivers Hill. This will result in additional erosion and accretion of sand to the Frankston Beaches and to Daveys Bay. These additional effects were not considered in the 1998 EES or the 2003 Supplementary EES.

To avoid undergoing a statutory planning process, the Minister for Planning, Justin Madden has exercised his powers under Section 20(4) of the Planning and Environment Act 1987 and exempted himself from all requirements of Sections 17, 18 and 19 of the Act. The Minister justifies this decision largely on advice he has received from the Priority Development Panel (PDP).

This action taken by Minister Madden directly conflicts with the recommendations contained in the 2003 Planning/Advisory Panel Report, the 2003 Planning Minister's Assessment, **and with his own statement of the 24 June 2008 given to the Legislative Council when responding to a question on notice.** See further details below.

The 2003 Planning/Advisory Panel Report states, "...importantly a signal is sent that the achievement of this objective [*the approved development*] cannot proceed heedless of relevant environmental conditions and information, or riding roughshod over significant and valid concerns of third parties who retain the potential to be adversely affected".

Prior to the 'Recommendations', the final paragraph of the 2003 Planning/Advisory Panel Report states, **"In closing, the Panel wishes to provide its strong view that this is a borderline case. In its view, its findings and recommendations represent the maximum credible and supportable response to the Olivers Hill proposal on the basis of its current knowledge. If there should be an unwillingness or incapacity to carry out the additional environmental investigations recommended in many instances now by the EES Panel, the Minister for Planning and this Panel; or if there should be a further desire to detract from third party rights advocated in its recommendations, then this Panel would consider on balance that the amendment should be abandoned"**.

#### **Planning Minister's Statement in Parliament on 24 June 2008.**

On 24 June 2008 in the Legislative Council, Planning Minister Madden responded to a question on notice from the Hon. Sue Pennicuik, MLC relating to the PDP review of the Council's Preferred Development Model (ie. the enlarged marina covered by the subsequent C50 Amendment), as follows:

Hon. J. M. MADDEN (Minister for Planning) – "Sue Pennicuik raised the matter of the Frankston Safe Boat Harbour and the priority development panel's (PDP) consideration of those matters. I have had an informal discussion with representatives from the Priority Development Panel, but I am awaiting formalised advice from the department in relation to what will come out of the PDP. I anticipate that information will be for public consumption. **Should it be thought that any options might be considered as proposals going into the future I would expect it would only be natural that any planning scheme amendments would be advertised accordingly along with due process"**.

The PDP's recommendation for the Minister to exercise his rights under Section 20(4) of the Planning and Environment Act and amend the Planning Scheme and circumvent the normal planning process and third party rights, contradicts the 2003 Planning/Advisory Panel Report, the 2003 Minister's Assessment and the Minister's advice to Parliament 24 June 2008.

Both the 2003 Planning/Advisory Panel Report and the 2003 Minister's Assessment unequivocally require any expansion to the approved marina (such as is prescribed in the C50 Amendment), to be **subject to a statutory planning process with full third party rights and review.** This requirement has not been met.

The decision taken by the Minister to exempt himself from Sections 17, 18 and 19 of the Act subsequent to information and advice proffered by the Priority Development Panel contradicts the DSE Advisory Note of February 2006 which states the following;

"The Priority Development Panel is not a responsible authority or planning authority under the Planning and Environment Act 1987, [nor] a substitute for Planning Panels Victoria in its role under Part 8 of the Planning and Environment Act 1987".

Based on the above information, the Frankston Beach Association submit that the role of VCAT in the statutory planning process has been undermined and the actions of the Minister in this instance set an unhealthy precedent for the continued removal of procedural fairness and continued denial of natural justice.