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**Subject:** Amendment C258 Melbourne Planning Scheme | Submissions by Bennett's Lane Custodians [RCL- Documents.FID1184059]  
**Date:** Monday, 12 November 2018 10:29:38 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.jpg](#)  
[image004.jpg](#)  
[Letter submission to Amendment C258.pdf](#)  
**Importance:** High

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Dear Madam

Please see attached correspondence in relation to the above matter.

Kind regards  
Donna

**Donna Bilke**

Legal Assistant/Paralegal

*Assistant to Rhodie Anderson & Gemma Robinson*



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12 November 2018

**URGENT**

Jenny Moles  
Panel Chair  
Planning Panels Victoria  
1 Spring Street  
MELBOURNE VIC 3000

**By Email: [planning.panels@delwp.vic.gov.au](mailto:planning.panels@delwp.vic.gov.au)**

Dear Madam

**Amendment C258 Melbourne Planning Scheme  
Submissions by Bennett's Lane Custodians on question of recusal**

These submissions are made on behalf of the group of companies described to the Panel for convenience previously as Bennett's Lane Custodians (**BLC**).

On 7 November 2018, Counsel for the submitter Metro Pol Pty Ltd foreshadowed an application for the recusal of the Panel. The Panel scheduled a hearing for 2pm on Monday 12 November 2018. BLC relies on this written submission in support of the request that the Panel recuse itself. BLC limits itself, as it has done in previous submissions, to Amendment C258 as it can be seen to affect the interests of BLC.

On 8 November 2018, Bennett's Lane Custodians (BLC) received a statement of grounds prepared on behalf of Metro Pol.

BLC supports the position outlined on behalf of Metro Pol and says as follows;

**Context –general**

- 1 BLC is a submitter in the proceeding. The ability of BLC to participate in Amendment C258 occurred much later than it should have. There was regrettable overlooking of its interests by the Planning Authority and the Panel for far too long;
- 2 BLC was not notified of Amendment C258 despite clear information that the Planning Authority was aware for some time that it was materially affected;

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- 3 The Panel should have at least been concerned about the potential impact on BLC when it was advised, prior to the commencement of the hearing, that a review of affected properties was “current”;
- 4 BLC has made submissions to the Panel that the Panel should identify the opportunity that will be afforded to BLC and that it would then be appropriate for BLC to make submissions about procedural orders. The constitution of the Panel would properly be considered in the light of the Panel’s findings as to whether a rehearing is being afforded;
- 5 BLC has also submitted that its direct interests are limited to Clause 22.04 but that the scope of this is clouded by the apparent changes and even merging of Clauses 22.04 and 22.05 post exhibition, and post the commencement of the Panel;
- 6 In two directions hearings BLC has been concerned that:
  - (a) The Panel has indicated a “determination” “preference” and apparently a “decision” to proceed with the hearing without first identifying the nature of the opportunity to be heard;
  - (b) The Panel has asked BLC to identify whether it has particular questions for particular witnesses without first making findings as to the opportunity that will be afforded and why;
  - (c) The Panel has made an invalid and prejudicial “balance” between the convenience of the Planning Authority and those persons who were properly notified and the “reasonable opportunity” that must be provided to those who were not.
  - (d) The Planning Authority and Panel appear to treat BLC as a submission to be accommodated without disrupting proceedings and as a latecomer, intruder or delayer when BLC is blameless for the plight of Amendment C258.

## **Submissions– recusal**

On 7 November 2018 the Panel Chair summarised declarations that it had made to the submitters who had been earlier provided with an opportunity to be heard. They are not repeated here.

Further, the common law principles applying to recusal are not set out here. They are well known and, it is submitted, unarguably apply to the Panel by virtue of the obligation to provide a reasonable opportunity to be heard, natural justice and procedural fairness.

BLC submits that:

- 1 The later joined submitters including BLC are reasonably entitled to fresh eyes and ears when they make submissions and test evidence. This is particularly so because evidence will be heard (or part heard according to the Planning Authority) for a second time. There is no transcript. It is not reasonable or fair that the same Panel

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hear the same witnesses, having previously heard and interrogated the witnesses and heard submissions about their evidence;

- 2 The appointment of two Panel members who are members of the National Trust was an error of judgement that should have been avoided. No declaration can cure the perception of bias, as understood by law, when the National Trust is a submitter to the Amendment. More caution should have been exercised at the outset;
- 3 In the above circumstances, the proximity of the Panel Chair to the National Trust (via the Heritage Council) and months of time within Amendment C258 as one of three members renders the Panel Chair's position untenable;
- 4 In short, the continuation of this Panel to hear Amendment C258 as it affects the interests of BLC fails the pub test; and
- 5 BLC otherwise supports and adopts the position of Metro Pol Pty Ltd.

Yours faithfully

A handwritten signature in blue ink that reads "Rigby Cooke". The signature is written in a cursive, flowing style.

Rigby Cooke  
Lawyers