



14 November 2018

As addressed

Dear Submitter

Melbourne Planning Scheme Amendment C258 Panel Advice and Directions

This is a written record of the events, Panel advice and Directions made by the Panel at the Procedural Hearing on **Monday 12 November 2018**. The Directions have been slightly amended by the inclusion of dates and other clarifications.

1. Background to Procedural Hearing

The Panel's correspondence of 21 September 2018 (Document 104) advised that the Panel Hearing was adjourned on 19 September 2018 to allow the Council to give notice of the Amendment to the owners of properties proposed to be, or recently included in, Heritage Overlays (precinct or individual) by other amendments to the Planning Scheme – Amendment C328 (affecting Hoddle Grid properties); Amendment C271 (Guildford and Hardware Lanes properties); and Amendment C305 (Southbank and Fisherman's Bend properties). The notice to the property owners advised of the current Hearing by this Panel and invited late submissions and requests to be heard by the Panel. The notice indicated that a Directions Hearing would be held on Wednesday 7 November 2018 to consider the further progress of the Hearing.

There was a small number of responses to the notice. Late submitters responding to the notice as well as other persons who had earlier requested to submit to the Panel (see Panel correspondence of 21 September 2018 (Document 104)) attended on 7 November 2018.

Submissions were made at that time that the current Hearing should not proceed. The Panel reserved its ruling in response to these submissions and the Council response and advised it would provide a written ruling with reasons.

Following this, Counsel for Metro Pol Investments Pty Ltd (Metro Pol) foreshadowed orally that Metro Pol wished to make application for the Panel to recuse itself.

2. The Procedural Hearing

This recusal application was then set down for Monday 12 November 2018, with the grounds for the application required to be circulated by close of business on Thursday 8 November 2018. The outline of the grounds by Metro Pol were circulated as directed (Document 107). Written submissions supporting the recusal request were received on the morning of 12 November 2018 on behalf of:

- Sydney Road Holdings Pty Ltd (owner of 577-583 Little Collins Street (Document 106)); and
- a group of companies referred to as Bennett's Lane Custodians (owners of the land described in correspondence from Rigby Cooke to the Council on their behalf dated 26 October 2018 (Document 105) and proposed for inclusion in a precinct overlay in the Hoddle Grid (Document 107)).

At the 12 November 2018 Hearing, following a procedural matter raised by the Panel, oral and written submissions were presented by Metro Pol (Document 99) and the Council (Document 100) on the recusal application.

The Panel reserved its ruling in relation to the recusal application until submissions regarding an alternative procedural course for the Hearing (set out below) were received. If accepted, this alternative course would obviate the need to rule on the recusal application and the 7 November 2018 submissions regarding fairness.

Alternatively, if the matter did not adopt the alternative course suggested by the Panel, the rulings would be provided.

3. Suggested alternate way to progress the Amendment

At the outset of the Procedural Hearing on 12 November 2018, the Panel orally set out an alternative way to progress the Amendment, which is intended to respond to the concerns of the late submitters about a fair Hearing process and also afford fairness to those (28 or more persons/organisations) who had presented over the 14 Hearing days, commencing on 6 August 2018.

The Panel suggested that it may be appropriate to exclude the late submitters' properties from the operation of the proposed Clause 22.04 policy affecting the Hoddle Grid. This might be done by a clause of the policy itself referring to certain properties being excluded from its operation, or by application of a Specific Controls Overlay under Clause 45.12 of the Planning Scheme.

The Panel noted that the 26 October 2018 correspondence to the Council from Rigby Cooke (Document 105), on behalf of the Bennett's Lane Custodians, had included that the heritage policies sought via the Amendment should not apply to their clients' land.

The Panel advised that:

- Exclusion from the policy should only apply to the land owned by persons making late submissions to the Council in response to the notice given at the start of October (and who had not received earlier notice in relation to the Amendment) where the late submissions were being referred to the Panel.
- The current policy at Clause 22.04 might continue to apply to this land until the Scheme was further amended.
- The application of any new Clause 22.04 policy to that land would be a matter for Council, which might be dealt with as a separate amendment and before a different panel if required.
- It would be necessary for the Council and all late submitters referred to the Panel to agree to this course. To this end clarification would be needed from the Council whether Planning Property Partners clients' and Ryder Commercial's client have made submissions and are being referred to the Panel as late submitters.
- There may be some variation to this course as suggested in outline by the Panel.
- Written responses from the relevant submitters and the Council about the alternative course would be required within a reasonably short timeframe.
- It is appropriate that submitters and the Council are given leave to seek a further Procedural Hearing to resolve this matter.

Some debate ensued about when written responses should be required by the Panel. The Panel considers that it is reasonable to require a written response by Monday 26 November 2018.

If agreement to this course was reached in writing, then the remainder of the Hearing (without the late submitters) might be completed in four days commencing Friday 14 December 2018. This

would allow Mr Raworth's further expert witness report for the Melbourne Business School to be circulated by no later than Friday 7 December 2018. Confirmation by the Melbourne Business School, Melbourne University and the Council that these dates are suitable would be required. Half of the final day would be utilised for a without prejudice drafting workshop.

If any late submitter or the Council seeks a further Hearing on this procedural matter, then any future Hearing dates would likely have to be revised.

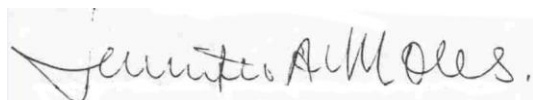
If agreement is not reached, the Panel will issue its rulings with reasons concerning the submissions made on 7 and 12 November 2018 concerning procedural fairness and recusal and further Directions as appropriate.

4. Panel Directions

The Panel directs:

- By no later than 4pm on Monday 19 November 2018, the Council must confirm with the Panel (and copy those on the attached distribution list), the list of late submissions that are referred to the Panel, including whether submissions have been received from Ryder Commercial and Planning Property Partners' clients and whether those submissions are referred to the Panel.
- By no later than 4pm on Monday 26 November 2018, each late submitter being referred by the Council to the Panel (as confirmed above) and the Council, must advise the Panel (and copy all others on the distribution list) whether they agree to the alternative course suggested by the Panel in part 3 of this letter – either as set out or in modified form.
- Leave is granted to apply for a further Procedural Hearing concerning this matter.

If you have any queries, please contact Joe Morrow at Planning Panels Victoria on (03) 8392 5137 or planning.panels@delwp.vic.gov.au.

A handwritten signature in black ink that reads "Jenny Moles". The signature is written in a cursive style and is positioned above the printed name.

Jenny Moles

Panel Chair