



# Planning Panels Victoria

Department of Environment, Land, Water and Planning

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As addressed

Dear parties,

## **Fishermans Bend Planning Review Panel: Draft Amendment GC81**

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### **STATEMENT OF REASONS - DIRECTIONS**

Draft Amendment GC81, prepared by the Minister for Planning, seeks to introduce permanent planning controls for four precincts in Fishermans Bend.

Upon making a submission, submitters were provided with a notification letter (Document 16) advising, amongst other things, that a Directions Hearing was to held on 20 December 2017 and that the hearing was to commence on 12 February 2018.

Two Directions Hearings have been held:

- 20 December 2017
- 2 February 2018.

The Review Panel received a number of requests and applications for directions from the Review Panel as to the conduct of the hearing and procedural matters.

The attached document sets out the Review Panel's reasons for its decisions in relation to those requests/applications.

Yours sincerely

**Kathy Mitchell**

Fishermans Bend Planning Review Panel Chair

#### **Privacy Statement**

*Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002*



## STATEMENT OF REASONS - DIRECTIONS

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### The landowners' adjournment request

On 19 December 2017, various landowners within Fishermans Bend requested that the public hearings be adjourned to commence not before 30 April 2018. They submitted that the draft Amendment is complex, and has a significant impact on their various interests. They submitted that they needed more time to digest the draft Amendment material and understand its impacts, retain appropriate representation and witnesses, and prepare their cases. Written and oral submissions together with affidavit material was produced in support of the request.

The City of Melbourne and the City of Port Phillip (the Councils) and the Minister for Planning<sup>1</sup> (the Minister) were opposed to the landowners' adjournment request. They submitted that there is a pressing need for permanent controls to be put in place to guide development in Fishermans Bend. They submitted that they would be ready to present their cases on 12 February 2018, and the proposed timeframes provided all parties with a reasonable opportunity to organise appropriate and competent representation, and prepare for the hearing.

The Review Panel granted the landowners' adjournment request in part. At the Directions Hearing it verbally, and on 28 December 2017 in writing, directed that the hearings would take place in two stages. Stage 1 would commence on 12 February, and Stage 2 would commence on 9 April. The Minister would present his full case, including evidence, in Stage 1. The Councils would present their primary submissions in Stage 1, and have the option of presenting evidence in either Stage 1 or Stage 2 (or both). Other submitters would have the choice whether to appear in Stage 1 or Stage 2, allowing them further time to engage representation and prepare their cases.

Parties were requested to resubmit their availability through a new Request to be Heard Form.

### The landowners' request for information

In November 2017, the Fishermans Bend Taskforce (the Taskforce) conducted two public briefing sessions for the Review Panel and a guided site visit. The briefings and site visit were attended by members of the Taskforce and the Review Panel. Members of the Review Panel also met with Council officers following the public briefing sessions. This preliminary work was undertaken in accordance with the Terms of Reference of Review Panel.

The landowners' request (Document 19) included a request for directions requiring the disclosure of all communications from the Fishermans Bend Taskforce with the Review Panel. This request was not opposed by the Minister.

The Review Panel's directions dated 28 December 2017 require the Taskforce to:

- replicate the public briefing sessions and the site visit, making them open to all submitters
- provide any speaking notes in relation to the public briefing sessions and the site visit.

The Review Panel had previously tabled and made publicly available, copies of the presentations made to the Review Panel at the public briefing sessions and the site visit.

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<sup>1</sup> In these reasons, the Minister/Taskforce is used interchangeably.

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The Review Panel's directions dated 5 February 2018 require any party who wishes to raise a procedural issue that may be of interest to other parties to provide a copy to all parties. Any such correspondence will be recorded with a Document Number, and will be uploaded to the Planning Panels Victoria website.

### **The Minister's adjournment request**

On 19 January 2018 and again on 25 January 2018, the Minister requested that the Stage 1 hearing be adjourned to commence on 13 March 2018, with associated adjustments to the dates of various pre-hearing steps, including the filing and serving of evidence on behalf of the Minister and the Councils. The primary reason for the request was that some of the Minister's witnesses were not able to meet the dates proposed in the Review Panel's directions dated 28 December 2017 for filing and serving evidence, and appearing at the Stage 1 hearing. It was submitted that the Minister's case would be prejudiced if the Minister was required to circulate his Part A submission and present part of his case without having all the evidence available. It was submitted that it would be inefficient to deliver the Minister's case in this way. Written and oral submissions together with affidavit material was produced in support of the request.

The Councils supported the request, on the basis that the Minister's case should be substantially completed before the Councils were required to present their cases.

The Minister put forward a proposed revised timetable for the Stage 1 hearing that was agreed with the Councils.

Some landowners opposed the adjournment request. Some did not. Some landowners did not oppose an adjournment of the hearings per se, but objected to the Minister's revised timetable. Some landowners submitted that if the adjournment was granted, the whole hearing should be deferred until sometime not before July 2018.

Landowners who objected to the adjournment request did so on the basis they were prepared for the dates that had been set following the first directions.

Landowners who did not oppose the adjournment, but objected to the Minister's proposed revised timetable, submitted that the proposed revised timetable caused difficulties with legal representation, and curtailed the amount of time between the Minister and Councils filing and serving their evidence, and the landowners filing and serving their evidence. They submitted that the revised timetable did not allow sufficient time to digest the evidence filed on behalf of the Minister and the Councils, and to properly prepare cross examination of the Minister's and Councils' witnesses.

The Review Panel granted the Minister's request in part and determined that the Stage 1 hearing would commence on 1 March 2018 with the public briefing and site inspection to be replicated on 13 and 14 February 2018 respectively. It also directed some variations to the dates proposed by the Minister.

The Review Panel rejected the request to defer the hearing until the second half of 2018.

### **The basis of the Review Panel's reasons**

In making its various determinations, the Review Panel considered the submissions, evidence and any supporting material of the parties. In the interests of brevity, not all this material has been cited or referred to in these reasons. The Review Panel has been guided by its Terms of Reference, relevant provisions of the *Planning and Environment Act 1987*<sup>2</sup> and its overriding obligations to act according to equity and good conscience, and to afford natural justice to all parties. The Review Panel has sought to balance the interests of the various parties, and those of the general public, to ensure fairness and justice to all parties, and an efficient hearing process that allows the Review Panel to be appropriately informed in relation to the matters on which it is required to advise the Minister.

Natural justice is not a fixed concept. What is required will depend on the circumstances of the particular case. While other panel and advisory committee processes provide useful context, the Review Panel has considered what natural justice requires in the circumstances of this particular draft Amendment, and this particular process.

The Review Panel has considered many factors, including:

- the matters outlined above
- the complexity of the draft Amendment
- the length and effectiveness of the notice provided to affected parties
- the amount and complexity of material
- the impacts the draft Amendment could potentially have on landowners if approved
- the impacts if the process is delayed
- the timeframes within which the parties have been required to prepare their submissions
- the proposed timeframes in which parties have to prepare for the hearings including obtaining representation and expert evidence.

The Review Panel has taken into account standard practices in this forum in terms of procedure and timing relating to expert evidence. It has considered the fact that some of the preparation time for the hearings falls within Christmas and January, a period in which many people traditionally take holidays. It has considered the general public interest in having the proposed controls being considered by the Review Panel in a timely manner, and in ensuring that the process is run in an efficient and effective manner.

In partly granting the landowners' adjournment request in December 2017, the Review Panel considers that the staging of the hearing and the associated procedural directions provided a fair and just way in which to conduct the hearing by allowing more time for the landowners who require it to prepare for the hearing while minimising the overall delay and allowing the hearing to be conducted in an efficient manner.

In partly granting the Minister's request in February 2017, the Review Panel considers that the Minister has provided sufficient reasons for the adjournment request and that the length of the adjournment request is reasonable in all of the circumstances. The Minister's representative was frank in submitting that the Minister's position at the December 2017 directions hearing may have been ambitious and that it had become apparent to the Minister that more time was required – in this respect, there is nothing to suggest that the request for adjournment was brought other than in good faith. The Review Panel has considered the prejudice that is likely to be suffered by the respective parties and determined on balance that the adjournment should be granted.

The Review Panel has since made directions that reflect this outcome.

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<sup>2</sup> In particular sections 151, 152, 159, 161, 165 with necessary changes in accordance with section 152(2).