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15 May 2018

Attn: Ms Kathy Mitchell

Planning Panels Victoria
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BCC: parties according to the distribution list

Dear Madam Chair,

**Fishermans Bend Planning Review Panel
Norton Rose Fulbright request for extension of time for closing submissions**



We refer to the letter of Norton Rose Fulbright (NRF), dated 15 May 2018, seeking an extension of time to 22 June 2018, for the filing of closing submissions.

This extension should not be granted for the following reasons:

1. A primary outcome for the Review Panel is to recommend amendments to the proposed Amendment, including through the provision of a track change version of the proposed controls. A drafting issues session to inform these recommendations has been scheduled since the first version of the hearing timetable was released prior to the commencement of the hearing.
2. The submitters to the Advisory Committee have been on notice since 18 April that the Minister was intending to present further draft controls on 14 May. It should reasonably have been expected these changes would seek, as far as possible, to try to resolve issues identified by the parties in their material. There is nothing inappropriate about this.
3. It is well-established that, provided the required state of satisfaction is formed, the Minister is permitted to adopt and approve a planning scheme amendment without notice to any persons apart from the relevant responsible authorities: *Grollo Australia Pty Ltd v Minister for Planning* [1993] 1 VR 627, at p. 637; *East Melbourne Group Inc. v Minister for Planning* (2005) 12 VR 448, [73].
4. Moreover, having exhibited an initial set of controls, procedural fairness does not require the Minister to provide further drafts to expose his provisional thinking on how issues raised by the parties might be addressed: *Minister for Immigration and Border Protection v SZGUR* (2011) 241 CLR 594, [9].
5. Notwithstanding this, the Minister has chosen:
 - a. To establish an Advisory Committee process as a vehicle for public participation in the assessment of the proposed controls; and
 - b. To provide updated draft controls in order to facilitate the making of additional submissions by interested persons.

6. The rationale for both these decisions is to ensure that interested persons who are affected by the proposed amendment are given an adequate opportunity to comment. Nonetheless, there must be an end to proceedings. The fact that the landowners have chosen to approach their participation in this process on the basis that they will not offer solutions to problems they have identified does not mean that they are entitled to a further opportunity to make submissions whenever another person does identify a solution.
7. In any event, the NRF letter only identifies two changes as warranting the extension sought, being the change in affordable housing policy and the deletion of clauses 3 and 4. Neither of these warrant the grant of a further 4 weeks to consider the Part C controls:
- a. In relation to the affordable housing issue, it is noted that:
 - i. As noted in the letter on behalf of the City of Port Phillip of 15 May, this issue has been raised substantially earlier.
 - ii. In any event, the position of the landowners, as expressly stated by Counsel in response to a question from the Chair, is that the private sector has no role in providing affordable housing. It is difficult to see how this position could be affected by the proposed change.
 - b. In relation to the proposed mechanism for provision of open space, streets and lanes in clauses 3 and 4:
 - i. The immediate effect of the proposed change in approach is simply that the mechanism in clauses 3 and 4 are deleted. This change is directly responsive to submissions made by the landowners.
 - ii. The option of utilising an ICP was expressly raised with Mr Shipp in cross-examination, and by Mr Morris QC in his submissions, who specifically noted that the Public Land Contributions Act would be introduced in either July or September. Other witnesses – such as Mr McGurn, Mr Song and Mr Barnes – have also been examined about the underlying principles that should apply to any infrastructure provision mechanism.
 - iii. Had the Panel recommended the deletion of the mechanism in clauses 3 and 4, it would have been open to the Minister – for the reasons identified above – to adopt an ICP without further notice to the affected persons.

If the Review Panel considers that an extension is warranted, then a considerably shorter extension should be granted. The Minister submits that no more than 10 days would be required.

All parties have been blind copied according to the distribution listed.

Yours faithfully,



HARWOOD ANDREWS

Encl.