

15 May 2018

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

**Attention: Ms Kathy Mitchell**  
Chair, Fishermans Bend Planning Review Panel  
Amendment GC81  
Planning Panels Victoria  
1 Spring Street  
Melbourne VIC 3000

Norton Rose Fulbright Australia  
ABN 32 720 868 049  
Level 15, RACV Tower  
485 Bourke Street  
MELBOURNE VIC 3000  
AUSTRALIA

Tel +61 3 8686 6000  
Fax +61 3 8686 6505  
GPO Box 4592, Melbourne VIC 3001  
DX 445 Melbourne  
nortonrosefulbright.com

**Direct line**  
+61 3 8686 6367

**Email**  
linda.choi@nortonrosefulbright.com

**Our reference:**  
4000767

Dear Ms Mitchell

### **Fishermans Bend – Draft Amendment GC81**

We refer to the above matter and continue to act for the Norton Rose Fulbright Landowner Group (**Landowners**).

Late on the afternoon of 14 May 2018, the Minister for Planning produced a further Revised Draft of the proposed Amendment (**Part C Draft**).

The Part C Draft includes significant changes to the form of the controls, even when compared to the Part B Draft of the proposed controls circulated on 29 March 2018, the contents of which the Landowners have addressed through evidence and submission.

Those changes include (but are not limited to):

1. a fundamental change to the mechanism proposed to acquire land for public purposes (previously contained in, in part, clause 4.0 of the schedule to the CCZ); and
2. the proposal of a 20% policy target for affordable housing (which is directly contrary to the Minister's Part B submission).

We note that, with respect to the changes proposed to the open space delivery mechanism:

1. these changes were not foreshadowed by the Minister at any time prior to 14 May 2018;
2. the new mechanism (and the new form of the controls) has not been the subject of any evidence, nor have the Landowners been given any opportunity to call evidence as to the proposed new controls;
3. the new mechanism (and the new form of the controls) were not put to any witness called by the Landowners in cross-examination; and
4. the new controls propose the use of a planning tool, being the Infrastructure Contributions Overlay (**ICO**), which was gazetted on 15 May 2018.

APAC-#68293599-v1

15 May 2018

 NORTON ROSE FULBRIGHT

For the sake of the record, the Landowners repeat our Counsel's oral submissions made on 14 May 2018 that the acceptance by the Review Panel of the Part C Draft represents a denial of procedural fairness.

Neither the Landowners, nor any other submitter to the hearing aside from the Minister has had (or will have) any proper opportunity to respond to the Part C Draft, to call evidence about the Part C Draft, or to cross-examine witnesses called by the Minister and/or the CoPP and the CoM before the scheduled close of this hearing on 24 May 2018.

The Landowners also acknowledge and accept the ruling of the Review Panel that they intend to accept and consider the Part C Draft, and to allow the Minister to make further submissions in closing about the Part C Draft.

The Landowners write now to advise the Review Panel that, having regard to the matters identified above, they will not be in a position to:

1. file written submissions concerning the Part C Draft by 18 May 2018 as directed; or
2. make properly informed submissions about the Part C Draft on 23 May 2018; or
3. participate in any meaningful way in the "Round table discussion regarding drafting issues" scheduled for the morning of 23 May 2018.

In part, this is because we will not be in a position to provide informed advice to our various clients as to the implications of the Part C Draft to their various interests in time to undertake the tasks identified above.

Instead, the Landowners request the opportunity to file a further written submission addressing the Part C Draft by no later than 22 June 2018.

Yours faithfully



Linda Choi  
Associate  
Norton Rose Fulbright Australia  
Partner: Tamara Brezzi