25 April 2018

Email: 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

Dear Ms Mitchell

Fishermans Bend – Draft Amendment GC81

We refer to Ms Leanne Hodyl’s Addenda 6 for Montague and Sandridge precincts circulated by the Minister for Planning on 24 April 2018 (Addenda 6).

On 23 April 2018, the Review Panel granted leave for the Minister for Planning to provide two Addenda to Ms Hodyl’s expert witness statement dated February 2018. This leave was granted on the basis that Ms Hodyl provides a “written commentary on the matters identified in Harwood Andrews’ letter on 19 April 2018.”

Accordingly, the following matters listed in Harwood Andrews’ letter form the scope of the leave granted:

1. The modelling of Mr Sheppard, Mr McGurn and Ms Heggen in order to explain the differences between the various witnesses’ models.

2. Mr Sheppard’s recommendations in his precinct specific evidence relating to building heights to explain why in Ms Hodyl’s evidence those recommendations should not be adopted.

No leave was sought, nor granted by the Review Panel for Ms Hodyl to file an Addenda that represented a general “Response to expert witness reports” or to file additional evidence that did not address the matters identified above.

However, Addenda 6 includes evidence that far exceeds the limited scope of the leave sought and granted. In particular:

1. The leave granted with respect to addressing the 3d modelling was restricted to evidence as to whether that modelling was “accurate”. That question is addressed in Paragraphs 32 – 36 of Addenda 6.

2. Paragraphs 37- 72 address an entirely different question, namely: whether that modelling responds to the preferred character for the various precincts as articulated in the draft MSS. This is not an issue of modelling accuracy.

3. Further, the leave granted was restricted to providing a response to Mr Sheppard’s “evidence relating to building heights” and why those recommendations should not be adopted.

4. Part 3 of Addenda 6 (pages 15 -25) again greatly exceed the scope of the leave that was sought and granted. Relevantly;

APAC-#67183975-v1
I. Part 3 is entitled: Are Mr Sheppard’s proposed changes to the draft built form controls (including height controls) in draft Amendment GC81 supportable by reference to the preferred character as articulated in the draft MSS? Accordingly, the Addenda has expressly NOT been restricted to the question of height controls.

II. The new evidence contained in Addenda 6 is not restricted to comment on the issue of building heights as recommended by Mr Sheppard, but effectively extends to any and all recommendations made by Mr Sheppard, as well as recommendations made by Mr McGurn and Ms Heggan as well.

III. Of most concern is the extensive new evidence (paragraphs [81] to [101] which concern the FAR, and includes extensive new material that concerns the FAR control (see also conclusions at [112] and [113]). Much of this evidence was not put to Mr Sheppard in cross-examination. Further it has been represented after the Landowners have presented their evidence and submissions.

Should the Review Panel accept Addenda 6 in its current form, it will be accepting new expert evidence that it has not given leave to have presented to it, and indeed which greatly exceeds the scope of the leave that was sought.

Further, the Landowners and other parties will be denied procedural fairness if this is permitted.

On these bases, our clients submit that Ms Hodyl’s Addenda 6 should not be received by the Review Panel and strongly object to it being considered by the Review Panel.

Please contact Tamara Brezzi (8686 6226) or Linda Choi (8686 6367) if you have any questions.

Yours faithfully

Linda Choi
Associate
Norton Rose Fulbright Australia
Partner: Tamara Brezzi