

## Fishermans Bend Planning Review Panel Directions Hearing

### Directions sought and outline of submissions

#### Direction sought

- 1 The Review Panel should:
  - a Schedule the hearing to commence not before 30 April 2018;
  - b Direct that the Task Force disclose all communications it has made to the Review Panel,
    - i In the case of written communications, by producing the communications; and
    - ii In the case of oral communications, by producing a written summary of the communications.
  - c After reviewing the disclosures in (b), itself disclose all communications (not disclosed by the Task Force) that the Review Panel has made with the Task Force, or with any other person, concerning its terms of reference,
    - i In the case of written communications, by producing the communications; and
    - ii In the case of oral communications, by producing a written summary of the communications.

#### Submissions

- 2 This submission is made on behalf the landowners on the attached list (the landowners).

#### Legal principles governing panel process

- 3 The Review Panel, having been appointed pursuant to s 151 of the *Planning and Environment Act 1987* (“the Act”), is bound by the rules of natural justice.

#### Importance of proposed Amendment GC 81

- 4 The subject matter of the proposed Amendment is important in the public interest.
- 5 However, the Amendment is also of vital important to the landowners.
  - a The Amendment has the potential to dramatically affect the value of the landowners’ interests, to the extent of many millions of dollars.
  - b The Amendment has the potential to render expenditure on plans, consultants, permit applications, metropolitan levy payments and

VCAT reviews abortive, to the extent of many hundreds of thousands (and in at least one case millions) of dollars.

- 6 The *content* of the rules of natural justice is affected by the nature and significance of the interest of affected parties. In this case, the Amendment affects property interests – and in a substantial manner – and thus warrants a careful and considered process to ensure it is fair.

#### Adjournment to ensure fair process

- 7 The hearing must be adjourned to allow sufficient time for the landowners to consider the implications of the proposed Amendment and to make submissions. To press on with the hearing in February would be unfair.
- 8 The *nature of this proceeding* by-passes the protections offered to a landowner, and a submitter, in the planning scheme amendment process. But, because the nature of the impacts is essentially the same as a planning scheme amendment, the protections that are afforded to a landowner and submitter ought to be similar.
- 9 The *documentation* that founds the proposed Amendment is *voluminous*. Time is needed to absorb this information. Time is then needed to address it.
- 10 The *documentation* of the proposed Amendment is *complex*. Time is needed to absorb this information. Time is then needed to address it.
- 11 Much of the information founding the proposed Amendment, and the proposed Amendment itself, is of *recent origin*; and some of it has been (or is being) the *subject of substantial up-date*.
- 12 *Christmas* is upon us. Hallelujah! Most persons engaged in planning matters take leave over the Christmas/New Year period, often to revive after a busy year. This means that the effective preparation time in this case – the time to absorb and respond – is substantially reduced.
- 13 Naturally many landowners want to be represented by *experienced counsel*. It will not always be possible for a landowner to have its counsel of choice. But, to achieve a fair outcome, it is necessary that each landowner be able to engage suitable counsel, even if not its preferred counsel. The demands of this case are such (on top of the normal course of planning proceedings) that not all landowners will be able to engage suitable counsel; especially for the duration of the hearing or for those parts of the hearing that affect their interests.
- 14 Landowners need the advice and, quite likely, the evidence of *planning professionals* to fairly consider the proposed Amendment and to put their case. This relates not just to planners, but economists, traffic engineers, urban designers and the like. The same problem exists in this regard as with counsel.

### Urgency

- 15 The proposed Amendment is *not urgent*.
- 16 The formulation of the Amendment has been years in the making. It does not make sense that the most affected stakeholders – the landowners – have only months to respond.
- 17 Indeed, some of the major transport infrastructure upon which the proposed Amendment hangs, remains uncertain. Ultimately decisions about this infrastructure will need to be made before any planning response as to urban form can be locked in.
- 18 It will not matter if there is some delay. In this regard, any political desire (for example, “let us do this before the next election”) ought not be influential. Put simply, this is not a natural justice consideration.

### Notification

- 19 If the proposed Amendment were an amendment, notice would be required to be given to owners and occupiers of land materially affected by the amendment. It is unclear if, or to what extent, this has occurred in relation to the proposed Amendment.
- 20 It is essential that proper notice be given to the owners and occupiers of land materially affected by the proposed Amendment, in order to ensure that the overall process is fair.
- 21 One of the advantages of adjourning the hearing to a date not before 30 April 2018 is that such notice can be given.

### Review Panel considerations

- 22 One of the requirements of natural justice is that any hearing take place with the knowledge of affected stakeholders. In this context, a “hearing” is not just a formal hearing, but includes any communications of substance in relation to the subject matter of the proposed Amendment.
- 23 This requirement is important so that a stakeholder knows what the Review Panel has been told; and so, if desired, the stakeholder can respond.
- 24 It would appear that the Review Panel has had meetings with the Task Force and, possibly, with local councils; and that these meetings took place without relevant stakeholders being aware of the meeting or being present.
- 25 The Review Panel will need to remedy this matter to ensure fair process. The directions sought are intended to provide a suitable remedy. (Of course, if there is some disclosure that requires recusal, this may be necessary. But it is premature to jump to any conclusions about this.)

Stuart Morris

19 December 2017