

**IN PLANNING PANELS VICTORIA
BEFORE THE PLANNING REVIEW PANEL CONSIDERING DRAFT PLANNING SCHEME
AMENDMENT GC81 FOR FISHERMANS BEND**

INVOLVING

ALL SUBMITTERS

And

MINISTER FOR PLANNING

And

PORT PHILLIP CITY COUNCIL

And

MELBOURNE CITY COUNCIL

AFFIDAVIT OF KATE JACQUELINE MORRIS

Date sworn: 2 February 2018
Filed on behalf of:
Prepared by:
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I, Kate Jacqueline Morris, of Harwood Andrews Lawyers, Level 5, 707 Collins Street, Melbourne, Victoria 3008, Lawyer, do solemnly and sincerely make oath and say as follows that:

1. I am a lawyer employed part-time by Harwood Andrews and have the conduct of this matter on behalf of the Minister for Planning.
2. Unless stated to the contrary I make this affidavit from my own information, knowledge and belief.
3. The contents of this affidavit faithfully reflect the chronology of events and my instructions in respect of this matter.
4. On 4 December 2017, Harwood Andrews was engaged by the Legal Services Division of Department of Environment, Land, Water and Planning (**DELWP**) to represent the Minister

for Planning (**Minister**) at the hearing before the 'Fishermans Bend Planning Review Panel' (**Review Panel**) concerning proposed planning scheme amendment GC81 to the Melbourne and Port Phillip Planning Schemes.

5. When Harwood Andrews was engaged in this matter, I was instructed that a Directions Hearing for the Review Panel was scheduled to occur on 20 December 2017 and the substantive hearing was likely to run between 12 February 2018 and 9 March 2018.
6. I first met with my instructors at DELWP (including the Fishermans Bend Taskforce) about the matter on 7 December 2017 at which time we discussed retaining expert witnesses in relation to:
 - a. Planning;
 - b. Urban design;
 - c. 3D Modelling;
 - d. Transport planning;
 - e. Open space planning;
 - f. Development feasibility;
 - g. The broad economic context of Fishermans Bend.
7. At the meeting on 7 December 2017, my instructors identified various potential experts who they identified as conflicted because of their involvement in various planning permit applications.
8. At the meeting on 7 December 2017, it was agreed that members of the Fishermans Bend Taskforce (**Taskforce**) would contact a number of potential witnesses, including Andrew Grant of Charter Keck Cramer directly to ascertain his availability and willingness to give evidence about development viability in Fishermans Bend.
9. On 8 December 2017, a member of the Taskforce instructed me that Andrew Grant or his Managing Director was supportive of giving evidence and we agreed to meet with Mr Grant as soon as practicable to discuss the matter further.
10. I commenced making enquiries about the availability of suitably qualified persons to give expert evidence on 7 December 2017. Between 7 December 2017 and the directions hearing on 20 December 2017, my office made extensive enquiries of various consultants in relation to:
 - a. Planning;

- b. Urban design;
- c. Transport planning;
- d. Traffic engineering;
- e. Open space planning;
- f. The broad economic context of Fishermans Bend.

11. Specifically, in relation to open space planning, transport planning and traffic engineering, I made the following inquiries:

- a. On 7 December 2017, I telephoned Lisa Riddle of Ethos Urban enquiring about her availability to give evidence for the Minister in relation to open space planning. Ms Riddle was interstate on business at the time and indicated she would get back to me about her availability once I emailed her the dates for the Review Panel hearing.
- b. On 12 December 2017, I telephoned Valentine Gnankone of One Mile Grid to enquire about his availability and willingness to give strategic transport planning evidence in the matter. Mr Gnankone advised me he was conflicted and therefore unable to give evidence for us.
- c. On 13 December 2017, I emailed John Kiriakidis of GTA to enquire about his availability to give strategic transport planning evidence in the matter and also about the availability of his colleague, Christian Griffiths.
- d. On 14 December 2017, I met with Mr John Kiriakidis who advised me that neither he nor anyone else in his office had capacity to prepare expert evidence by 6 February 2018.
- e. In the week of 11 December 2017, I telephoned Melissa Merlo of Jacobs who advised me that:
 - i. she was on parental leave and therefore did not have capacity to prepare expert evidence in this matter; however,
 - ii. she would be happy to make enquiries about the availability of certain colleagues to assist.

12. Following receipt of instructions on 18 December 2017, I sent formal briefs to the following experts:

- a. Lisa Riddle, Ethos Urban, Open Space Planning;

- b. Leanne Hodyl, Hodyl & Co, Urban Design;
 - c. Melissa Merlo, Jacobs, public transport, sustainable transport and freight transport;
 - d. John Kiriakidis, GTA, strategic transport planning;
 - e. Tim Peggie, Ethos Urban, Planning.
13. On 19 December 2017, I received correspondence from Jacobs advising that John Richardson was available to provide evidence in relation to the merit of the two new light rail routes included in the draft Amendment.
14. On 19 December 2017, my colleague, Greg Tobin, advised me that he had enquired about the availability of John Glossop, Glossop Town Planning and Mr Glossop had indicated he was available to give evidence.
15. On 19 December 2017, I received an email from Ms Riddle of Ethos Urban advising:
- a. she did not feel in a position to offer her services other than in an advisory role; and additionally,
 - b. for personal reasons, the timing of the case made it very difficult for her to commit to the matter.
16. On 20 December 2017, I emailed Richard Warwick of Smedley Tech & Strategic enquiring whether he was willing and available to provide evidence in strategic transport planning in the matter.
17. On 20 December 2017, I appeared at a Directions Hearing before the Review Panel together with my colleague Greg Tobin, on the Minister's behalf.
18. At the Directions Hearing, the Review Panel heard submissions from Mr Stuart Morris QC for various landowner Submitters, that the Review Panel hearing ought not to commence before 30 April 2018.
19. Consistent with our instructions and on behalf of the Minister, Mr Tobin opposed the requested adjournment.
20. After hearing all submissions about the adjournment request, the Review Panel determined that the hearing would proceed in two stages as follows:
- a. Stage 1 would commence on 19 February 2018; and
 - b. Stage 2 would commence on 9 April 2018.

21. Despite best efforts, I was unable to arrange a telephone discussion with Andrew Grant of Charter Keck Cramer and a member of the Taskforce regarding development viability evidence until 21 December 2017.
22. On 21 December 2017, I spoke with Andrew Grant of Charter Keck Cramer (CKC), together with a member of the Taskforce regarding development viability evidence. During that telephone discussion, Mr Grant gave me the clear impression that either he or his colleague, Scott Keck would be willing and available to give evidence about development viability in the matter.
23. On 22 December 2017, I instructed my colleague, Allison Tansley, to contact Joanna Thompson of TBLD to enquire about her capacity and willingness to give evidence relating to open space planning in the matter.
24. On 22 December 2017, my colleague, Allison Tansley, emailed Ms Thompson enquiring about her availability and willingness to give evidence.
25. On 22 December 2017, my colleague, Allison Tansley, emailed me advising Ms Thompson had called her and expressed an interest in providing evidence but was concerned about whether she might have a conflict of interest because of work she had previously undertaken for the City of Melbourne in relation to the draft Fishermans Bend Framework Plan. Ms Tansley advised Ms Thompson we would confirm with her whether we required her assistance or not.
26. On 22 December 2017, I spoke with Richard Warwick of Smedley Tech & Strategic and he advised me that although he was available to give evidence in the matter, he considered his colleague Shaun Smedley was better able to provide strategic transport planning evidence. Mr Warwick advised he would liaise with Mr Smedley about the matter but gave me comfort that Mr Smedley would likely have capacity to give evidence.
27. I commenced annual leave on 22 December 2017 and returned to work on 8 January 2018.
28. At the time I commenced annual leave:
 - a. I believed that Shaun Smedley of Smedley Tech & Strategic was likely to be available to give evidence in strategic transport planning;
 - b. I believed that either Mr Grant or Scott Keck would be available to give evidence on development viability;

- c. I believed Joanna Thompson was interested in giving evidence in open space planning but was concerned she might be conflicted. Because Ms Thompson had been advised of the Review Panel hearing dates and did not, to my knowledge, raise timing as an issue, I did not anticipate Ms Thompson might not be have capacity to assist.
29. On 9 January 2018, I tried to contact Ms Thompson at her office telephone number, but the phone rang out.
30. On 9 January 2018, I instructed my colleague Allison Tansley to email Ms Thompson and advise her we were still interested in talking with about providing expert evidence, On the same day, Ms Tansley emailed Ms Thompson making further enquiries about her availability to give evidence despite her previous work for Melbourne City Council.
31. On 15 January 2018, Ms Thompson emailed my colleague, Ms Tansley, and me advising she had just returned from leave on 15 January 2018 and would call me on 16 January 2018 to discuss the matter further.
32. On 15 January 2018, I emailed briefs to the following experts:
- a. Shaun Smedley of Smedley Tech & Strategic in relation to strategic transport;
 - b. Scott Keck of Charter Keck Cramer in relation to development viability; and
 - c. Julian Szafraniec of SGS in relation to broad economic context.
33. On 15 January 2018, I received a reply email from Shaun Smedley advising he had been intending on getting back to me sooner and would take another look at the letter and get back to me ASAP.
34. On 15 January 2018, I received an email from Scott Keck of CKC advising that, inter-alia:
- a. timing was a major issue for him in providing evidence and he would not be available to make a start on evidence until 22 February at the earliest; and
 - b. his firm had 'embedded' potential conflicts of interests.
35. On 16 January 2018, I received an email from Robert Papaleo of CKC expressed as being further to Mr Keck's email of 15 January. In that email, Mr Papaleo advised that, inter-alia, CKC would not be able to provide expert evidence in the matter, for a range of 'professional, capacity and other reasons'. Mr Papaleo apologised for not being able to convey the position earlier 'due to the inevitable interruptions at this time of year'.

36. On 16 January 2018, I spoke to Joanna Thompson regarding her availability and willingness to give evidence about open space planning. Ms Thompson expressed some concern to me about the timing but agreed to look at a brief.
37. On 16 January 2016, I emailed Ms Thompson a brief enquiring about her availability and willingness to give evidence in relation to open space planning.
38. On 16 January 2018, Ms Thompson emailed me advising that she did not have the capacity to assist us.
39. On or about 16 January 2018, I spoke with Luke Mackintosh from Ernst & Young (EY) to enquire about his availability and willingness to give evidence in development viability in the matter. Mr Mackintosh was willing to give evidence but expressed concern about the timing of his evidence.
40. On 17 January 2018, I emailed a brief to Luke Mackintosh from EY enquiring about his availability and willingness to give evidence in development viability in this matter.
41. On 17 January 2018, my colleague Allison Tansley emailed Tim Gosbell of WSP Australia Pty Ltd on my behalf to enquire about his willingness and availability to give evidence in strategic transport planning.
42. On 17 January 2018, I spoke with Mr Gosbell enquiring about his willingness and availability to give evidence in strategic transport planning. He advised he would consider his capacity and get back to me.
43. On 17 January 2018, I received an email from Shaun Smedley advising he did not have capacity to give evidence in the matter.
44. On 17 January 2018, I telephone Mr Smedley and asked him to reconsider his capacity given the indications I had received from his firm before Christmas that he would likely have capacity to provide evidence, but he was adamant that he was unable to assist.
45. On 17 January 2018, I telephoned Ms Thompson and asked her to reconsider her capacity. Ms Thompson agreed to reconsider.
46. On 18 January 2018, Ms Thompson emailed me confirming that she did not have the capacity to assist in the required timeframe.

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47. On 18 January 2018, Mr Mackintosh confirmed on the telephone that he did not have capacity to assist in the required timeframe.
48. By 18 January 2018 it was apparent the witnesses my office had approached and whom I believed would be available or likely available to give evidence in strategic transport, development feasibility and open space planning could not assist, either within the requisite time frame or at all.
49. On 18 January 2018, after consulting with counsel, I made enquiries about the availability of various experts in strategic transport, development feasibility and open space planning to assist in the event the Review Panel hearing was adjourned until 13 March 2018. On the basis of that date, the following experts confirmed they would be available to assist:
- a. Luke Mackintosh in development viability;
 - b. Joanna Thompson in open space planning;
 - c. John Kiriakidis in strategic transport planning.
50. On 18 and 19 January 2018, I made enquiries about the availability of the following experts:
- a. Leanne Hodyl (urban design);
 - b. John Glossop (planning);
 - c. Julian Szafreniec (economic context);
 - d. Professor Donald Bates (urban design);
- to give evidence before the Review Panel in the weeks of 13 March or 20 March 2018 in the event the Review Panel hearing was adjourned until 13 March 2018. The experts all confirmed their availability to give evidence on this basis.
51. On 19 January 2018, I received instructions from DELWP to request an adjournment of the hearing, due to the unexpected unavailability of CKC and Smedley Tech and Strategic and the inability of other witnesses in relation to transport planning, development feasibility and open space planning to provide evidence before 5 March 2018.
52. On 19 January 2018, I wrote to Planning Panels Victoria requesting an adjournment of the hearing until 13 March, with associated adjustments to the timing of circulation of expert evidence.
53. On 23 January 2018, Planning Panels Victoria advised that the adjournment request had been refused but the Panel was willing to make directions delaying the circulation of

evidence in relation to strategic transport planning, open space planning and development viability.

54. A consequence of the Panel's proposed directions was to require the Minister to file the Part A submission, the response to Key Issues and any amended documentation and to make submissions opening his case before the evidence to be called by the Minister in relation to strategic transport, development viability and open space planning is known.
55. In my opinion, the Panel's proposed directions will substantially disadvantage the Minister in the presentation of his case, will result in inefficient conduct of the hearing and will not assist the Panel in being informed about the appropriateness of the Amendment.
56. Accordingly, on 25 January 2018, I was instructed to renew the request for an adjournment with the support of Melbourne City Council and Port Phillip City Council and duly wrote to Planning Panels Victoria renewing the adjournment request and attaching a proposed timetable for Stage 1 of the hearing which has been agreed by Melbourne City Council and Port Phillip City Council.


SWORN at Melbourne in the State of)

Victoria on 2 February 2018)



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Signature of deponent

Before me:


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Signature or person taking affidavit

Allison Kate Tansley
Harwood Andrews
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An Australian legal practitioner within the meaning
of the Legal Profession Uniform Law (Victoria)