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URGENT

Planning Panels Victoria
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Dear Ms Mitchell,

**Fishermans Bend Planning Review Panel hearing – adjournment request
Draft Planning Scheme Amendment GC81**

We continue to act for the Minister for Planning. We refer to our letter of 19 January in which we requested that the Panel hold a directions hearing to consider our application for an adjournment and the Panel's response of 23 January determining that it would not do so.

The Minister respectfully renews his request for an urgent directions hearing to consider an adjournment, having regard to s 161(1)(b) of the *Planning and Environment Act 1987*. We request the directions hearing be listed on 1 or 2 February to enable the Panel to consider the renewed adjournment request.

While the Minister is grateful for the Panel's consideration to date and the directions that it has indicated that it proposes to issue, the Minister is concerned that the Panel's refusal to grant the adjournment as requested will result in a denial of procedural fairness and that the proposed directions are inadequate to ensure the opportunity to properly advance the case in favour of Amendment GC81. In circumstances where the Minister is unable to fairly and efficiently present the case in favour of Amendment GC81, the Minister anticipates flow-on consequences for the orderly and efficient conduct of the both stages of the hearing.

The current directions require the Minister to file the Part A submission, the response to Key Issues raised by the Panel and any amended documentation by 6 February. Under the proposed regime, this is approximately one month prior to the filing of the Minister's evidence in respect of strategic transport, economic feasibility and public open space. The consequence of this arrangement is that the Minister will simply not be in a position to substantively address strategic transport, economic feasibility and public open space in either the Part A or his opening submissions at the hearing or to respond to the Key Issues which relate to strategic transport, economic feasibility and public open space (being the majority of issues 25 – 41). It also means that the Minister's ability to respond to submissions relating to those issues, including by making amendments to proposed documents, is compromised.

It is the Minister's view that were he required to:

- Present argument so far in advance of evidence he would be substantively disadvantaged in this process.
- Not call relevant evidence by virtue of a timing issue he would be substantively disadvantaged.



The Review Panel's role is to provide advice to the Minister to inform potential future actions in respect of the draft amendment. In order to effectively discharge this role it is important that the Panel have appropriate information before it particularly where there are competing views expressed via the submissions. It is the Minister's position that a revised timetable, based on the adjournment requested, will ensure the Panel is better informed.

Moreover, there is a real risk arising from the Panel's proposed directions that other parties – in particular, Melbourne and Port Phillip Councils – will have to make submissions prior to receiving the evidence of the Minister's witnesses in relation to strategic transport, economic feasibility and public open space and thus without knowing the case to be presented by the Minister.

There is also a real risk of valuable hearing time being wasted, particularly if the Councils considered it was necessary to call more of their evidence in Stage 2, thus decreasing the amount of time available for other Stage 2 parties to present their case.

At a directions hearing, any party which is disadvantaged by the adjournment request would be able to advise of any prejudice. As matters presently stand, the Minister is unaware of any prejudice to other parties which would arise as a consequence of an adjournment which could not be cured by minor adjustments to the hearing timetable.

In the interests of assisting the Panel in the efficient and fair consideration and resolution of the adjournment request, the Minister has had discussions with Melbourne and Port Phillip Councils about the request and any suggestions they might have about how the request could be accommodated without unreasonably prejudicing them. The result of those discussions is that the Councils will consent to the grant of the adjournment if the Panel is agreeable to the attached schedule agreed between the Minister and the Councils for conduct of the Stage 1 hearing (including the related pre-hearing dates for filing and circulating evidence and the Minister's Part A submission).

If the Panel is unable to accommodate the Minister's request for a directions hearing to consider the adjournment request, then the Minister will need to reserve his rights, including to apply for further directions and variations to the timetable to address any issues that may arise from his inability to comply with the existing directions or to effectively conduct his case.

Should you have any questions, please contact Kate Morris on 0414870447.

Yours sincerely,

A handwritten signature in blue ink that reads "Kate Morris".

HARWOOD ANDREWS