

FISHERMANS BEND

AIDE MEMOIRE TO THE ORAL SUBMISSIONS

MADE 3 MAY 2018

1. On the issue of land acquisition effected by proposed Amendment G81, we adopt our Outline of Submissions dated 19 April 2018, particularly paras 74-82, 135-185 and the Submissions made to this Panel by Morris QC on the afternoon of 3 May.
2. The Proposed Schedules to the Capital City Zone effect at least six separate types of compulsory land acquisition :
 - Acquisition of a whole site for the purpose of a park;
 - Acquisition of portion of a site for the purpose of a park;
 - Acquisition of land for new roads;
 - Acquisition of land for road widening;
 - Acquisition of land for widening the proposed tramway; and
 - Acquisition of lanes.
3. In relation to the acquisition of the whole site (Aquaino) the effect of G81 would be to blight the land. It is also arguable that proposed Amendment G81, which would prohibit planning applications which are inconsistent with its park use, precludes the use of s. 98(2) of the *Planning and Environment Act* (“the Act”) to trigger a compensation claim. It follows that there is a real risk the landowners will be required to hold land blighted by operation of the Schedules to the Capital City Zone for thirty or forty years until the Government initiates an acquisition process.
4. Each of the other five types of compulsory acquisition are sheeted home to specific land owners without the opportunity to argue (as occurs in the

P.S.P. Amendment hearing process) that their compulsory land contribution effected by the amendment is inequitable by reason of inadequate compensation, unfair sharing or insufficient nexus.

5. The Common Law, the *Land Acquisition and Compensation Act* and the Act treat compulsory acquisition of land as a grave matter and ensure that the process is fair and equitable.
6. Sections 98, 100, 101 and 106 of the Act ensure that the land owner is adequately compensated for the acquisition and the compulsory nature of the acquisition.
7. Section 8 of the Act constitutes the Minister as a planning authority and empowers him to prepare amendments.

Section 12 provides:

- (1) *A planning authority must*
 - (a) *Implement the objectives of planning in Victoria; and*
 - (2) *(aa) Have regard to the Victorian planning provisions.*

8. Section 4(1) provides, inter alia :

The objectives of planning in Victoria are

- (o) *To provide for the fair, orderly, economic and sustainable use, and development of land.*

Section 4(2) provides, inter alia :

The objectives of the planning framework established by this Act are-

- (e) *To facilitate development which achieves the objectives of planning in Victoria;*

....

- (l) *To provide for compensation when land is set aside for public purposes and in other circumstances.*

9. Section 4 of the Act imposes clear constraints in the Minister's power to prepare and approve planning scheme amendments.

10. The Proposed Schedule 1 and 4 to the Capital City Zone does not:
 - Provide for fair and orderly planning 4(1)(a);
 - Facilitate development which achieves the objectives of planning in Victoria 4(2)(e); and/or
 - Provide for compensation when land is set aside for public purposes 4(2)(1).
11. It follows that proposed Amendment G81 is a proposal for a planning scheme Amendment that is illegal. The Minister could never lawfully exercise his power to approve such an Amendment.
12. Finally, we would draw the Panel's attention to Clause 20(3) of the Act which provides –

The Minister cannot exempt a planning authority from the requirement to give notice –

- (a) To the owner of any land, of an amendment which provides for -
 - (i) the reservation of that land for public purposes; or*
 - (ii) the closure of a road which provides access to that land; or**
- (b) to any Minister prescribed under section 9(1)(c); or*
- (ba) under section 19(2) or (3), if the amendment proposes a change to provisions relating to land set aside or reserved as public open space; or...*

Clause 20(3) is a further illustration of the strict fairness regime imposed by the Act on acquisition of land. Further, it would preclude the Minister from approving proposed Amendment G81 pursuant to the powers conferred upon him by S. 20(4) of the Act.