



# Planning Panels Victoria

Department of Environment, Land, Water and Planning

1 Spring Street  
Melbourne Victoria 3000  
GPO Box 2392  
Melbourne, Victoria 3001  
Telephone (03) 8392 5115  
Facsimile (03) 8392 5110

4 December 2017

As addressed

Dear Submitter/Council/Proponent,

## **Monash Planning Scheme Amendment C129: Rezoning of Former Talbot Road Sand Mine, South Oakleigh**

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### **Responses to material directed on 8 November 2017**

The Panel considering this Amendment has given several oral and written Directions concerning the supply of information and responses to it before, during and after the Panel Hearing.

The most recent Panel Directions concerning this matter were given in writing and dated 8 November 2017. The outstanding information was set out in a table with specified dates for supply by the Hearing parties on the circulation list.

Most information was received after the specified date, sometimes a considerable time after the due date, with the most recent information from the Council, due on 17 November, received only on 28 November 2017. All parties on the circulation list were to be supplied with all the information directed by the Panel and afforded 10 working days to reply. Not all parties were circulated correctly.

The Panel makes the following directions in relation to information received since 8 November 2017.

**Panel Direction 1:** Responses to all supplied information (to the extent that responses have not already been forwarded by the Hearing parties) will be accepted by the Panel **until Monday 18 December 2017**. Please enquire with the Planning Panels Office if you have not been supplied with the requested information of 8 November 2017. Your response is to be copied to others on the attached circulation list.

### **Earth Resources Regulation Legal Advice**

The legal advice sought from the Earth Resources Regulation Branch of DEDJTR (ERR) has not previously been circulated to the parties on the circulation list. A copy of that advice is now attached.

**Panel Direction 2:** Any party on the circulation list may respond to the ERR advice by no later than **Monday 18 December 2017**. The reply is to be filed with the Panel and copied to others on the circulation list.

### **Urbis Legal Advice**

Norton Rose Fulbright (NRF), the solicitors for Sterling Global, have resisted the supply of the legal advice to Urbis directed by the Panel on 8 November 2017. The advice concerned the planning permit applications in 2015. In correspondence to the Panel dated 15 November 2017, it was said that:

#### **Privacy Statement**

*Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002*



*...legal professional privilege subsists in the Advice and as such, it will not be released. The matters addressed in the Advice are not limited to the matters addressed in the summary document provided to the Panel concerning the validity of the Works Authority and Permit 4371 (Summary Document). We advise that the submitted Summary Document is consistent with the Advice to the extent that it addresses these matters (noting also that the Iluka decision, referred to in our submissions, has been published subsequent to the advice).*

Ms Valente responded to this correspondence by email on 15 November 2017 including that it was her view that:

*...this privilege was explicitly waived when your client released the legal advice to Council. This legal advice, (which I assume Council has a copy of) was then relied upon by Council in granting your client the planning permits of 2015.*

NRF resisted this assertion on 20 November 2017, saying:

*Mrs Valente's email claims that privilege in the Advice has been waived on the basis that our client released the advice to Council. Her email goes on to state that that Council then relied upon the Advice in granting our client the backfilling permit. With respect, there is no basis in fact for either of these statements. The advice has never been released to the Council and, as such, could not have been relied upon by the Council. We request, through the Panel, that Mrs Valente be required to retract these misleading statements.*

Ms Valente responded further on 21 November 2017, pointing to the reference to this advice in the officer report concerning the permit applications presented at the Council meeting of 28 April 2015 (Hearing Document 50), again arguing that privilege could not be claimed.

The Panel has considered this matter and notes that there is discussion in various parts of the relevant officer report to the nature of the permission being sought by the permit applicant including the views of EPA on this matter. The Panel is of the view that given the direct reference to legal advice being provided to Urbis and to the content of that advice in the officer report to the Council meeting (apparently quoting from that advice), legal privilege no longer subsists in that advice. The extent of 'reliance' by the Council on the Urbis advice is not clear, but the Council approach taken to granting the permissions sought does not appear to be inconsistent with that advice.

The concern that the legal advice to Urbis was not limited to the issue of the permissions sought under the scheme, can be dealt with by supplying a copy of the advice with the other advice redacted.

**Panel Direction 3:** Sterling Global is to file with the Panel and serve on the other parties on the circulation list, a copy of the legal advice to Urbis concerning the application for the 2015 permits (redacted if required) by **no later than close of business on Wednesday 6 December 2017.**

Any party on the circulation list may respond to the circulated advice by **no later than Monday 18 December 2017.** The reply is to be filed with the Panel and copied to others on the circulation list.

#### **ERR Western Australian examples of construction on slimes**

Ms Valente has suggested that further information concerning these two sites (including their precise locations) which were referred to in ERR presentation to the Panel should be sought. The Panel agrees that the locational details of the sites should be provided.

**Panel Direction 4:** The Panel requests ERR to provide greater detail about the location of the sites in Western Australia which were referred in the ERR presentation at the Panel Hearing.

The advice is to be filed with the Panel and copied to persons on the circulation list by **no later than Friday 8 December 2017**.

Any party on the circulation list may respond to the circulated advice by **no later than Monday 18 December 2017**. The reply is to be filed with the Panel and copied to others on the circulation list.

#### **Proforma submissions**

The Panel has received a total of 341 proforma submissions as sent to the Council. Some have additional comments added. Not all the submissions had been received by the last day of Hearing.

The submissions can be inspected by any party on the circulation list at the PPV office by contacting Laura Agius – Panel Coordinator PPV by phone or email as below.

A corrected summary of the submissions prepared by the Council was sent to the Panel on 10 November 2017. A copy is now attached.

**Panel Direction 5:** Any party on the circulation list may respond to matters raised in the proforma submissions by **no later than Monday 18 December 2017**. The reply is to be filed with the Panel and copied to others on the circulation list.

#### **Supplementary submissions**

In response to the Panel letter of 13 November 2017, inviting submissions to the Panel in writing from the persons who had forwarded proforma submissions to the Council, the Panel received 86 written submissions on or before 30 November 2017. Copies of those submissions have been sent to all parties on the circulation list today via express post.

Please note that Late Submitter 57 has requested that further hearings be conducted by the Panel and some other late submitters have indicated that they would be able to present to the Panel if a Hearing were called.

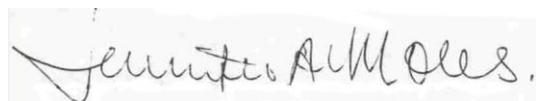
**Panel Direction 6:** Any party on the circulation list may respond to the written submissions by **no later than Monday 18 December 2017**. The reply is to be filed with the Panel and copied to others on the circulation list.

#### **Documents list**

An updated documents list is attached.

Leave is granted to apply for further directions.

If you have any queries please contact Planning Panels Victoria on (03) 8392 5115 or [planning.panels@delwp.vic.gov.au](mailto:planning.panels@delwp.vic.gov.au).

A handwritten signature in black ink that reads "Jenny Moles". The signature is written in a cursive style and is positioned above the printed name.

**Jenny Moles**

Panel Chair