

# Appendix 1

SJB Planning



Attn: Ms Kathy Mitchell  
Panel Chair  
Planning Panels Victoria  
1 Spring Street  
MELBOURNE VIC 3001  
[Redacted]

Date: 21 April 2020

Re: Request to be Heard – Charbury Pty Ltd  
Casey Planning Scheme Amendment C258case

Dear Ms Mitchell,

We act on behalf of Charbury Pty Ltd, submitter to Casey Planning Scheme Amendment C258 (the Amendment).

We refer to the Panel's letter dated 16 April 2020 which seeks further information regarding the Panel's proposal to conduct the Directions Hearing via Skype and foreshadows the possibility of the Hearing of the Amendment being conducted by way of video conference, via written submissions or by way of a combination of these two alternatives.

We write to advise that our client has significant reservations regarding the proposal to conduct either the Directions Hearing or the Hearing of the Amendment by way of video conference or by way of written submissions.

Whilst our client has internet access and could conceivably participate in any video conference hearing, our client is concerned that a video conference between participating submitters and the Panel is not consistent with the Panel's obligation to conduct its hearings in public pursuant to s160(1) of the *Planning and Environment Act 1987* (the Act).

Our client has further concerns regarding the potential for the hearing to be conducted by remote hearing. A hearing conducted by way of written submissions would substantially prejudice the conduct of our client's case, with particular regard to the calling of expert evidence and cross-examination of any expert evidence in support of the Amendment. Our client is not satisfied that a hearing "on the papers" in the circumstances of this Amendment is consistent with the requirements of natural justice under s161(b) of the Act.

Our client's position is that proceeding with the hearing via video link and/or written submissions is a sub-optimal approach, and one that has the potential to disadvantage the Planning Authority and all submitters. There are problems or potential problems in relation to the following matters: technological limitations which may be experienced by some submitters including submitters in person, including variable capacity and reliability of internet connection; the physical separation of legal teams from instructors and instructors; the integrity of witness evidence; document management; the challenge of conducting hearings from home whilst supervising children or caring for others. There is the risk that a

LTR Panels Request to be Heard (ID: 1791767)

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hearing commenced by videoconference becomes unworkable and cannot proceed, wasting time and money and jeopardising the integrity of a future hearing by the same Panel members.

It might be thought that some of these challenges should be accepted due to the exceptional circumstances created by the COVID19 crisis. However, there is no need for expedition regarding the Amendment, the Amendment does not directly facilitate economic development by way of a specific project or address gaps or defects in the planning scheme which require urgent remedy. The Planning Authority has spent many years developing the Amendment, which does not introduce or alter planning controls; instead, the Amendment updates and refines existing local policy that is already available in the exercise of discretion when considering permit applications. In the context of this Amendment, the shortcomings of the remote hearing approach are not outweighed.

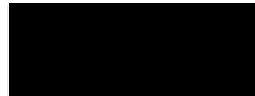
A delay of the Panel hearing until face-to-face hearings can resume has limited (if any) adverse implications for the Planning Authority or submitters.

We therefore respectfully request that the Panel delays the hearing of the Amendment until such time as face-to-face hearings can resume. We understand that Planning Panels Victoria has taken this approach in other amendments currently awaiting hearings such as Amendments C278 and C305 to the Melbourne Planning Scheme.

We consider this position is consistent with the *Communique from Planning Ministers - Land Use Planning and the COVID-19 Pandemic*, that any '...changes will need to consider the relevant legislative requirements and local context...'.<sup>1</sup>

We trust the Panel will take our client's concerns with the proposed approach to the hearing of this matter into careful consideration and look forward to receiving the Panel's further directions.

Yours sincerely



Hugh Smyth  
Director



cc: Charbury Pty Ltd