



Planning Panels Victoria

Department of Environment, Land, Water and Planning

1 Spring Street
Melbourne Victoria 3000
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Melbourne, Victoria 3001
Telephone (03) 8392 5115

4 May 2020

As addressed

Dear Submitter

Casey Planning Scheme Amendment C258case: Activity Centres Strategy

The Panel held a Directions Hearing for the above matter on 29 April 2020 by video conferencing using Skype. Please find attached:

- Panel Directions
- Distribution List
- Hearing Timetable.

The following dates apply:

Time	Date	Action	Direction
4.00pm	Friday, 8 May 2020	Any party calling evidence must provide the details of its witnesses	2
4.00pm	Friday, 15 May 2020	Parties are to advise of any sites they consider necessary for the Panel to inspect	3
4.00pm	Thursday, 28 May 2020	Council must circulate its evidence, Part A Submission and an electronic 'Panel Hearing' book to all parties on the distribution list	4,5,6
4.00pm	Tuesday, 2 June 2020	Parties to circulate expert witness statements	9
4.00pm	Tuesday, 2 June 2020	Parties to provide email address and telephone number for each hearing participant and other observers	17
10.00am	Friday, 5 June 2020	Test hearing session for all parties who will be participating in the hearing (including legal counsel and expert witnesses)	19
12.00pm	Wednesday 10 June 2020	Expert witnesses to complete and sign remote hearing conduct declaration (to be provided by the Panel)	15
10.00am	Thursday, 11 June 2020	The Hearing commences	

Declarations

The Panel made no declarations.

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



Procedural matters

At the commencement of the Directions Hearing, Ms Brennan SC for Charbury Pty Ltd requested that the Directions Hearing proceedings be recorded. No other party objected to that request, so the Senior Project Officer commenced recording at approximately 10.05am and kept the recorder on until the Directions Hearing concluded at approximately 12.45pm. If any Party would like to download a copy of the Directions Hearing recording, please contact Planning Panels Victoria via email and quote Casey C258case.

The Panel raised three procedural matters in its opening, these were:

1. Copy of the authorisation letter from DELWP and response to it by Council.

In response, Council agreed to provide the letter of authorisation and Council's response to the Panel and all parties.

The Panel accepts that response.

2. Letter from SJB regarding the potential deferment of the hearing (Document 19).

Submissions

Ms Brennan spoke to this issue at length. She noted that while the legislative amendments to the *Planning and Environment Act 1987*, specifically the new Clause 205B make it lawful for a Panel to conduct a hearing other than in person, it presents a number of issues, briefly summarised as follows:

- (i) Technical difficulties relating to the availability, variability and reliability of internet connections affecting video and audio quality, ability to have free flowing processes, and impediments to conduct the hearing, fairly and properly.
- (ii) Issues relating to the physical separation of party representatives and advocates obtaining instructions from clients or the instructing solicitor or planning consultant.
- (iii) Issues with witnesses giving evidence remotely, potential issues with integrity if a witness is receiving instruction from elsewhere.
- (iv) Remote document management.
- (v) Difficulties with participants needing to work from home with carer responsibilities.
- (vi) Whether this Panel process met the criteria of being an emergency management planning issue in the context of the Omnibus Bill introduced by the Premier, noting that the provisions are in place for six months.

Submissions in response

Other submitters present were invited to respond to the issues raised by Ms Brennan.

Mr Montebello for Casey City Council noted that while it is true there are technical challenges, these can be worked through, one way of which is to have a test run a few days prior to the formal hearing commencing. He advised that it is possible to have off-line discussions with instructors and clients using various types of media. He agreed document management requires careful management and that it assists to provide documents in advance. He submitted that the Omnibus Bill, while in operation for six months, allows the planning and legal industry to keep going and that it is important for Council to deal with significant issues of policy. He noted there are only three or four witnesses in this case, and it is important to give the Panel assurances that the witness integrity is maintained. Mr Montebello concluded by noting while the current situation is suboptimal, it can run very well.

The other submitters did not raise any concerns and noted they were accepting of the hearing to continue by video conferencing.

Ms Brennan maintained her concerns and agreed a test session would be useful. She reiterated the difficulties in working from home and that this current policy Amendment has no urgent policy imperative.

Panel response

The Panel considered the issues raised and other responses provided and concluded it did not accept the submissions of Ms Brennan. In providing its reasons, the Panel noted that all recognise the significance of the COVID-19 pandemic and the impacts it is having. The Panel acknowledged the new provisions in the *Planning and Environment Act 1987* to hold remote hearings have passed through Cabinet and Parliament and end on 31 October 2020.

The Panel noted it cannot know what the situation might be in mid-June when the hearing is to commence, there may be some opportunity to have some hearings in person with appropriate spatial distancing considerations.

It observed it is not practical to defer matters to later dates and noted some hearings have been postponed due to special considerations such as Melbourne C278 where there will be multiple parties, many of whom will provide significant visual evidence. The Panel concluded this Amendment is not one of those amendments. This Amendment has limited parties and there will be three witnesses. It acknowledged there may be some technical difficulties but there are ongoing and continual improvements to technology. The Panel supports having a test hearing and noted it may use the video conferencing technology Microsoft Teams instead of Skype. It further observed that the backlog at VCAT and some postponed PPV matters will result in a very long queue and significant hearing congestion.

The Panel noted Council should investigate other information sharing platforms that could be used during the video hearing to distribute information with access by all parties. This could include opportunities to live stream the Hearing. Council agreed to look into available options and would liaise with PPV through the Senior Project Officer.

With respect to documents provided by parties as part of submission or evidence, the Panel agreed that it would make a Direction with respect of this matter, this is Direction 10.

With regard to other matters raised, the Panel agreed that all information provided to the Panel must be provided to all parties and Council undertook to ensure this occurs.

The Panel advised it would allow more breaks for conferences within parties if required.

The Panel invited Council to prepare an electronic 'Panel Hearing' book with all relevant documents included in this and that other documents can be added as the hearing progresses.

In order to ensure witness integrity, the Panel indicated it would prepare an additional declaration for witnesses to sign relating to their conduct at remote hearings, and that it would provide this to Mr Montebello and Ms Brennan for review prior to it being implemented.

For these reasons, and given the imprimatur given by Government for Panel hearings to be held remotely, the Panel could find no reason to delay this hearing and it will continue with the mid-June dates.

3. Status of the late submission dated 23 March 2020 (Submission 15, Document 15), Reeds Consulting on behalf of Kameel Pty Ltd.

The Panel raised concern about a late submission dated 23 March 2020 from Reeds Consulting and accepted by Council, that was in response to the in-time submission from Charbury Pty Ltd. The Reeds Consulting submission included recommendations to the Panel that appear to be out of scope of the Amendment. This submission was supplemented by a further letter dated to 20 April 2020 to the chair which contained some of the same information but with additional information (Document 18).

Mr Montebello agreed that there were issues raised in the submission that were not relevant to these proceedings. He confirmed that only those matters directly related to the Activity Centres Strategy should be considered. Ms Brennan agreed and noted she did not have a copy of Document 18, which Council agreed to provide to her client. This document was circulated to all parties on the distribution list by PPV during the Directions Hearing.

Ms Brennan requested a copy of the Panels Document List be sent to all parties on the distribution list. This has been updated and provided to all parties with this letter.

If you have questions, please contact Amy Selvaraj, Senior Project Officer of Planning Panels Victoria on planning.panels@delwp.vic.gov.au.

Yours sincerely,



Kathy Mitchell

Panel Chair

Panel Directions

Casey Planning Scheme Amendment C258case: Activity Centres Strategy

Before the Hearing

Circulation of documents

1. All documents, submissions and evidence should be circulated to all on the distribution list and Council is to provide copies on its web site as soon as practically possible upon receipt.
2. Any party calling evidence must provide the details of its witnesses (name and area of expertise) by **4.00pm, Friday 8 May 2020**.

Site inspection

3. The Panel will conduct unaccompanied site inspections of any sites or areas upon request from Council and parties. Parties are to advise of any sites they consider necessary for the Panel to inspect by **4.00pm, Friday 15 May 2020** by contacting PPV through the details on the attached letter. If there are numerous sites, the Panel will ask Council to prepare a preferred route to enable the Panel to undertake inspections expeditiously. All sites recommended and any such route will be tabled as a hearing document.

Council - Part A submission and evidence

4. Council must circulate its Part A submission to parties on the distribution list by **4.00pm on Thursday 28 May 2020** that includes:
 - a) Background to the Amendment
 - b) Chronology of events leading to the Amendment
 - c) Strategic context and assessment
 - d) Council's position on the exhibited Amendment as a result of consideration of submissions, including a track change version of revised Amendment documentation
 - e) A detailed response to the issues raised in the Authorisation letter from DELWP
 - f) Copies of or links to any other strategic material Council intends to rely upon.

Note: Council's Part A submission will be taken as read by the Panel at the Hearing. Council should allow time for questions about its Part A submission on Day 1.

5. Council must file its evidence by **4.00pm on Thursday 28 May 2020**.
6. Council must complete and file an electronic 'Panel Hearing' book by **4.00pm on Thursday 28 May 2020** that includes any strategic document and other material that it intends to rely upon at the hearing. Once received, parties must advise Council if they seek to add other material to that book so that it can be updated prior to the commencement of the Hearing.

Witness reports

7. A witness report must:
 - a) comply with the PPV Guide to Expert Evidence (<https://www.planning.vic.gov.au/panels-and-committees/planning-panel-guides>)
 - b) not refer to any individual submitter by name – if necessary, submitters should be referred to by submission number
 - c) be provided to the Panel as an unlocked document.
8. Council must publish all witness reports on its website.
9. Any other witness report must be filed by **4.00pm on Tuesday 2 June 2020**.

At the Hearing

Submissions and information

10. Parties should present material at the Hearing electronically. Electronic information presented at the Hearing must be:
 - a) circulated to parties on the distribution list by 9.00am on the morning the information is to be presented.
11. If the Hearing can be conducted face to face:
 - any material sought to be relied upon must be brought to the Hearing Room on a USB stick in a clearly marked folder half an hour before the start of the day's hearing, to allow it to be uploaded onto the Hearing Room laptop.
 - If a paper copy is presented at the Hearing, at least six (6) copies must be provided, two-hole punched and stapled (not bound).
12. After presenting to the Panel, submissions (preferably in MS Word) should be emailed to planning.panels@delwp.vic.gov.au as an unlocked document.
13. All information presented at the Hearing is a public document unless the Panel directs otherwise.

Council - Part B submission

14. At the Hearing, Council must provide a **Part B submission** that addresses the following:
 - a) Its response to issues raised in submissions and evidence including the outcome of any further discussion it has had with submitters
 - b) Identify all changes to the Amendment documentation made between the exhibited version and the modified Council preferred version (if applicable)
 - c) Council's final position on the Amendment.

Further, it must respond to the following matters raised by the Panel at the Directions Hearing:

- d) Process of preparing the Activity Centre Strategy
 - (i) An explanation of the role SGS Economics and Planning in the preparation of the Activity Centres Strategy.
 - (ii) The function and purpose of the exhibited Background Paper.
- e) Content of the Activity Centre Strategy
 - (i) Table 1 (p25) provides a range of floorspace limits for each category of Centre. Noting this, there are no specific floor space guidelines or targets for individual Centres. Can Council clarify the reason for this?
 - (ii) What is the strategic basis of attributing 'aspirational' status (p17) to some centres i.e. for them to eventually move up one category in the Activity Centre hierarchy and what criteria have been used to attribute this term? Does 'aspirational' status attributed to some centres have any time frames associated with it and how does it align with State Planning Policy?
 - (iii) Strategy 8.4 (p34) supports the establishment of anchor uses in Activity Centres in growth areas and nominates a number of such anchor uses but does not include 'supermarkets' which often anchor the development of Neighbourhood Activity Centres. Is there a reason for this?
 - (iv) Has Strategy 11.2 (p42) which 'encourages' new development over 1000 square metres to be three stories in height and for at least 25% of it to be for non-retail purposes been 'tested' with the development industry? Is the base size of 1,000 square metres realistic? Does the use of the word 'encourage' in this strategy have any effective meaning? It is understood that the target relating to developments in excess of 1,000 square metres, is to apply on a centre wide basis, how will it be

Directions:

- applied in respect of a particular proposal in excess of 1,000 square metres? Is the proposal in Strategy 11.2 achievable for Neighbourhood Activity Centres (p26) at the lower end of the floorspace range?
- (v) Is Strategy 12.5 (p44) consistent with attempts to encourage residential development in Activity Centres?
 - (vi) Table 5 (p53) has the word 'criteria' in its heading, then goes on to outline 'principles' and then refers to 'policy directions' under the heading of key questions. The Table refers to criteria, principles and policy directions – we need to clarify the purpose of this table. How is a potential applicant meant to use Table 5 when assessing benefits and costs of a potential development in order to draw conclusions about Net Community Benefit?
 - (vii) The role and purpose of the walkable catchments represented in the un-numbered obliques on pages 15 and 16, the two diagrammatic representations on pages 22-23 and the section on the implications of the lack of Activity Centre planning in many north American cities serve (p13) are not clear to the Panel.
- f) Relationship of the Activity Centre Strategy to other relevant Planning Scheme clauses
- (i) The Panel seeks clarification about how out of centre development will be dealt with, for example,
 - (a) the 'performance standards' at Clause 22.02-4 and the Decision Guidelines in Table 4 in the Strategy
 - (b) Strategies in Objective 10 (p35) of the Strategy and the policy at Clause 22.01-4?
 - (c) Whether the out of centre provisions in the policy appropriately reflect what is included in the Strategy, given the policy has more weight.
 - (ii) How does the Activity Centres Strategy in its designation of proposed centres, align with approved Precinct Structure Plans?

Remote hearing conduct declaration

15. All expert witnesses presenting evidence to the Panel at a remote hearing, must complete and sign an expert witness declaration by **12.00pm Wednesday 10 June 2020** and provide this to all parties. Signed declaration forms are to be sent to PPV through the details on the attached letter, noting this declaration form is not included in this letter and will be provided prior to the Hearing.

Joining and participating in the video hearing

16. The Hearing is to proceed using the video conferencing technology Microsoft Teams (Teams).
17. By **4.00pm on Tuesday 2 June 2020**, all parties are to provide Planning Panels Victoria with the following information:
- A contact phone number to the Senior Project Officer for those who will participate in the Hearing (in case you have any connection issues and we need to contact you)
 - Individual email addresses and telephone numbers for any other hearing participants (including legal counsel that are not already on the distribution list and expert witnesses)
 - Individual email addresses and telephone numbers for any other Parties observers who wish to attend the hearing.

The above information will be used by PPV (or another party as nominated by the Panel, for example the Council if the hearing is to be lived streamed) to circulate the Hearing meeting invites, provide support during the Hearing if required, or as login details to access a online file sharing platform to facilitate the electronic tabling of documents during the Hearing in a way that is transparent to all participants and observers.

All Privacy obligations will be met, and this information will not be shared with any other party and will be made redundant at the conclusion of the Hearing.

Directions:

The Panel may conduct the Hearing to be face to face at short notice on the advice of Victorian health authorities and the Victorian State Government and a room at PPV has been booked for the Hearing dates.

18. All hearing participants and observers are to download the Microsoft Teams application to their device and familiarise themselves with the application before the test session and hearing starts. This should include testing of the microphone, speaker and camera. The application can be downloaded [here](#) free of charge.
19. A test hearing session will be held **at 10.00am Friday 5 June 2020** with all participants who will be participating in the Hearing (including legal counsel and expert witnesses). The purpose of the test session is to ensure all parties can access Microsoft Teams and personal setups can be tested prior to the formal hearing commencing.
20. Participants and spectators are to join the video hearing at least 10 minutes before it is scheduled to start by clicking on the 'Join Microsoft Teams Meeting' link in the email/calendar invitation.
21. The Panel will seek to live stream the Hearing and invites the Council to assist to coordinate this.
22. Participants and others in the video Hearing are expected to ensure that:
 - a) The virtual hearing should be in a quiet, private location
 - b) There is adequate internet coverage, a working microphone and camera (if speaking)
 - c) Microphones remain muted except when addressing the Panel
 - d) For all experts, their microphone remains muted and camera switched off except when they are giving evidence to the Panel
 - e) Microphones are muted during all breaks.

Distribution list

Casey Planning Scheme Amendment C258case: Activity Centres Strategy

Use this list to circulate expert witness statements and other information requested by the Panel. It must not be used for any other purpose. All material must be sent by blind copy.

Note Parties in the table below marked with an asterisk () have requested that they do not want to be heard at the Hearing but would like a copy of the timetable and any directions.*

Electronic documents

Party	email address
Planning Panels Victoria	planning.panels@delwp.vic.gov.au
Casey City Council	Briana.Eastaugh@maddocks.com.au Terry.Montebello@maddocks.com.au dborton@casey.vic.gov.au bcolbourne@casey.vic.gov.au planningscheme@casey.vic.gov.au
Woolworths Group	jf@adifferentcity.com.au
Reech Pty Ltd	henryj@ratio.com.au
ISPT Pty Ltd and Vicinity Centres	randerson@rigbycooke.com.au
Charbury Pty Ltd	hsmyth@sibplanning.com.au
Kameel Pty Ltd*	sarah.north@reedsconsulting.com.au Emily.Ling@reedsconsulting.com.au kameel@mondousproperty.com
BC Lynbrook Pty Ltd*	rbartlett@urbis.com.au

Timetable

Casey Planning Scheme Amendment C258case: Activity Centres Strategy

Timetable Version 1

Day 1: Thursday 11 June 2020

Time	Party	Sub No	Allocated
10.00am – 10.15am	Preliminary matters		15 mins
10.15am – 1.00pm	City of Casey , represented by Terry Montebello of Maddocks Lawyers, calling expert evidence in: <ul style="list-style-type: none">- Economics from Julian Szafraniec of SGS Economics and Planning	-	1 day
1.00pm – 2.00pm	Lunch Break		1 hour
2.00pm – 4.30pm	City of Casey , cont.		

Day 2: Friday 12 June 2020

Time	Party	Sub No	Allocated
10.00am – 10.15am	Preliminary matters		15 mins
10.15am – 1.00pm	Charbury Pty Ltd , represented by Susan Brennan of Counsel with Carly Robertson, instructed by SJB, calling expert evidence in: <ul style="list-style-type: none">- Economics tbc- Planning tbc	9	1 day
1.00pm - 2.00pm	Lunch Break		1 hour
2.00pm – 4.30pm	Charbury Pty Ltd , cont.		

Day 3: Tuesday 16 June 2020

Time	Party	Sub No	Allocated
10.00am – 10.15am	Preliminary matters		15 mins
10.15am – 10.45am	Reech Pty Ltd , represented by Henry Johnstone of Ratio Consultants	1	30 mins
10.45am – 11.15am	ISPT Pty Ltd and Vicinity Centres , represented by Rhodie Anderson of Rigby Cooke Lawyers	8	30 mins
11.15am – 11.30am	Tea break		15 mins
11.30am – 1.30pm	Woolworths Group , represented by Jonathan Fetterplace of A Different City Pty Ltd	13	2 hours
1.30pm – 2.30pm	Lunch Break		1 hour
2.30pm – 3.30pm	Closing submissions, City of Casey		60 mins

Hearing Timetable Notes:

1. The Panel may amend the timetable without notice.
2. Please join the meeting at least 10 minutes before your scheduled commencement time.
3. Time will be made for morning and afternoon breaks each day.
4. If you are unable to be present at your scheduled time, please contact Planning Panels Victoria as soon as possible.
5. If you have any questions about the timetable, please contact please contact Amy Selvaraj, Senior Project Officer at planning.panels@delwp.vic.gov.au.