



Planning Panels Victoria

Department of Transport and Planning

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13 May 2024

Dear Party

Priority Projects Standing Advisory Committee Referral 39 Victorian Civil and Administrative Tribunal Call-In – 47 South Road, Brighton

The Committee held a Directions Hearing for the above matter on Thursday 9 May 2024 at Planning Panels Victoria and online via MS Teams videoconference. Please find attached:

- Committee Directions
- Distribution List
- Hearing Timetable.

The following dates apply:

Time	Date	Actions for filing and other matters	Direction
12 noon	Wednesday, 15 May 2024	Finalise expert witness details	12
12 noon	Friday 17 May 2024	Parties to provide details of any specific sites or areas they seek the Committee to inspect (apart from the actual site) and nominate attendees	6, 7
12 noon	Monday, 20 May 2024	Applicant evidence to be filed	13.a)
12 noon	Monday, 20 May 2024	Site inspection written and visual plan to be filed	8
1.00pm	Tuesday, 21 May 2024	Accompanied site inspection (details to be provided)	4
12 noon	Wednesday, 22 May 2024	Council and Local Objector Group evidence (except traffic evidence) to be filed	13.b)
12 noon	Friday, 24 May 2024	Position on type/and or location of public open space contribution	11
12 noon	Monday, 27 May 2024	Council and Local Objector Group traffic evidence to be filed	13.c)
12 noon	Thursday, 30 May 2024	Traffic conclave report to be filed	21
12 noon	Monday, 3 June 2024	Opening submissions from Council and Applicant, and presentation by Applicant Architect to be filed	22.b)
10.00 am	Tuesday, 4 June 2024	Hearing commences	
12 noon	Wednesday, 12 June 2024	Comments on final drafting to be filed	

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



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Declarations

The Committee declared no conflict of interest in this matter. The Chair advised that Member Shiel previously attended Xavier College in Kew but never attended the former Brighton campus.

Procedural matters

At the Directions Hearing, the Committee identified six key issues to be discussed and resolved through the Directions Hearing process, these being:

- Hearing dates
- Key issues
- Focus of traffic evidence
- Traffic conclave
- Open space issues
- Documents and plans to be relied upon at the Hearing.

An additional issue raised by the parties was the order of presentation at the Hearing.

The Committee invited the parties to take the opportunity to discuss these matters without the Committee being present in an endeavour to resolve or fine tune the matters in dispute. The Committee then left the room until such time as the parties were able to reach agreement on issues or not.

With regard to the key issues, the Committee had directed each party or objector who sought to be heard to file a short statement setting out its key issues prior to the Directions Hearing. It received four statements and the Committee found those documents to be very useful in highlighting the matters to be pursued at the Hearing.

Upon the Committee's return, agreement was reached on four of the seven issues and this agreement is reflected in the timetable for the Hearing and the Committee Directions. This included:

- Hearing dates and the timing of filing of submissions and evidence were agreed
- all parties agreed to confine its submissions and evidence to the identified key issues in Documents 5–8
- traffic evidence should be focussed on the question: "*Is the proposed access from Hartley St appropriate?*"
- a traffic conclave and dates for this was agreed to
- documents and plans to be relied upon at the Hearing would be the Applicant's Day 1 documents already filed as Documents 11–14 (7 May 2024).

Two matters were not resolved, these being:

- Council's request for a legal member to be added to the Committee or for the Committee to appoint a legal adviser to assist with consideration of the appropriate public open space allocation
- The order of submissions and evidence at the Hearing.

Public open space:

Council made a written submission prior to the Directions Hearing, where it submitted there was likely to be a question of law regarding whether the mode of public open space contribution is a decision to be made by Council alone. Council suggested "... *The Committee should be reconstituted with a legally qualified specialist or otherwise have a senior planning barrister appointed to assist the Committee*" (Document 7). The Committee invited Council to speak to this at the Directions Hearing.

The Committee understands the key premise of Council's argument is that Council only can determine whether the public open space contribution be land or cash, and if land, where that land should be located. The Applicant's Day 1 plan shows an area of land it considers could be the public open space contribution, but Council does not seem to be accepting of that.

The Applicant did not support those submissions and outlined that as the Committee is advisory, it would not be subject to judicial review.

The Committee advised it could make one of its legal members available to sit on the Committee to assist in considering the issue if required, but in the first instance, the Committee directed the Applicant and Council meet to consider these issues more fully and to then advise the Committee of any agreed outcome. Both parties agreed to do that. This issue is further addressed in Direction 11.

If the issue is not resolved, the Committee will provide an additional half day for submissions about this matter on the timetable.

Order of submissions and evidence:

In summary, Council sought that the Applicant present its case in full, followed by Council and the objectors.

The Applicant sought that Council go first, followed by the objectors prior to presenting its case, noting this is the usual way if the case had remained at VCAT.

Both made submissions on this and agreed it is a matter for the Committee to determine.

This matter was called in by the Minister for Planning and referred to the Committee for advice. The Committee has no obligation to follow VCAT practices and it can run its cases as it sees fit, in accordance with procedural fairness. Upon consideration, the Committee considers it will be best informed if the Applicant presents its case in full first, followed by Council and then the objectors.

However, Council will be invited to make a short opening submission on Day 1 to outline its case and to confirm the key issues it seeks to rely upon.

At the end of the Hearing, both Council and the Applicant will have a right of reply, in that order.

If you have any questions, please contact Gabrielle Trowse, Project Officer, Planning Panels Victoria on [REDACTED] planning.panels@delwp.vic.gov.au.

Yours sincerely



Kathy Mitchell AM
Committee Chair

Directions

Priority Projects Standing Advisory Committee Referral 39
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Filing documents

1. Documents must be circulated by email to all parties on the distribution list.
2. Documents must meet the following requirements:
 - a) Files must not exceed 20MB in size.
 - b) File names must be as short as possible and begin with the name of the party as it appears on the distribution list:

[Party name] - [Document Title].
 - c) If tabling more than 10 documents at once, all documents must be provided through a fileshare link (for example, DropBox or OneDrive) and be accompanied by an index list.
 - d) A Microsoft Word version or unlocked PDF version of the document must be emailed directly to planning.panels@delwp.vic.gov.au after being filed.
3. All information presented to the Committee for the purposes of the Committee process is a public document solely for that purpose unless the Committee directs otherwise. It cannot be used for any other purpose.

Notes

Any request to access a document after that date will be subject to the Freedom of Information process.

For more information on how your submission will be used, refer to the [PPV Website](#).

If your document is larger than 20MB, break it down into parts that are less than 20MB each.

If you do not file documents by the specified time, the Committee may not accept the evidence or material. If you think you will not meet the specified deadline you must provide reasons in writing to planning.panels@delwp.vic.gov.au before the deadline.

The Committee will not publish or accept material that contains offensive or defamatory material, or personal information about other people (such as emails and phone numbers or photographs of people, particularly children).

Paper documents will only be permitted in exceptional circumstances.

If you have with difficulties providing documents electronically you should contact Planning Panels Victoria.

Site inspection

4. An accompanied site inspection will take place at **1.00pm on Tuesday, 21 May 2024**.
5. The Applicant must organise and manage all logistical details for the site inspection.
6. Any party or objector seeking to attend the site inspection, including any advocates and/or witnesses, must notify and advise the Committee by **12 noon on Friday, 17 May 2024**.
7. Noting that the Applicant will ensure it takes the Committee to various places relevant to its proposal, any party or objector who seeks the Committee to review a particular place or area external to the subject site is to provide that information to Planning Panels Victoria and the Applicant by **12 noon on Friday, 17 May 2024**.
8. The Applicant must file a written and visual plan of the inspection area, including the meeting point by **12 noon on Monday, 20 May 2024** (and bring additional copies to the site).
9. The Committee will confirm all details of the site inspection by **3.00pm on Monday, 20 May 2024**.

Before the Hearing

Notice of the Hearing

10. Planning Panels Victoria will publish notice of the Hearing on its website, with information on how members of the public can observe it in person and online.

Public open space issue

11. Council and the Applicant must meet prior to the Hearing to advise if a resolution can be agreed on how to provide for the public open space component. A position relating to this must be provided to the Committee and filed by **12 noon on Friday, 24 May 2024**. The position must:
 - a) set out the issues that are in dispute and not in dispute
 - b) be signed by all participants.

Expert witness details and reports

12. If not already provided, full details of all expert witnesses must be filed by **12 noon on Wednesday, 15 May 2024**.
13. Any expert witness reports must be filed as follows:
 - a) the Applicant must file its expert witness reports by **12 noon on Monday, 20 May 2024**
 - b) Council and the Local Objector Group must file their expert witness reports, except in traffic, by **12 noon on Wednesday, 22 May 2024**.
 - c) Council and the Local Objector Group must file their traffic expert witness reports by **12 noon on Monday, 27 May 2024**.
14. An expert witness report must:
 - a) comply with the PPV Practice Note 1 - Expert Evidence ([Expert witnesses \(planningpanels.vic.gov.au\)](https://planningpanels.vic.gov.au))
 - b) not refer to any individual submitter by name – if necessary, individual submitters should be referred to by submission number. Community groups, organisations, corporations and government agencies can be referred to by name.
15. An expert witness who has not participated in a meeting of experts can provide a response to other like evidence by 12 noon the business day before the Hearing commences.

Expert meetings

16. Expert witnesses in traffic areas must meet to prepare a statement of agreed opinions and facts. The Applicant's traffic expert (Jason Walsh of Traffix Group) should act as a chair for the meeting and coordinate arrangements and note taking.
17. The meeting(s) should be held after the expert reports are filed but before the Hearing commences.
18. The meeting(s) can only be attended by:
 - a) the experts being called to give evidence
 - b) a non-participating note taker if necessary.Advocates or parties instructing the experts must not attend the meeting(s).
19. If any expert witness is instructed not to reach agreement in respect of points of difference, the expert must report those instructions in writing to the Committee and all parties.
20. The statement(s) of agreed opinions and facts:
 - a) must list the relevant participants in attendance
 - b) must note if any participant is not present for any significant discussion point

- c) must record the facts and opinions agreed and not agreed in respect of each issue and the reasons for any disagreement
- d) should be fewer than five pages with numbered paragraphs
- e) should not restate the evidence – evidence should be cross-referenced in the agreed statement if required
- f) must be signed by all participants.

21. The statement of agreed opinions and facts must be filed by **12 noon on Thursday, 30 May 2024**.

At the Hearing

Presenting material

22. Submissions, presentations and other material presented to the Committee:
- a) must be presented electronically
 - b) must be filed by 12 noon on the business day before the material is to be presented
 - c) should relate to the matters before the Committee.

Submissions

23. The Committee has the Council Officers report which sets out its consideration of the proposal, as well as its ResCode assessment.
24. All parties have provided a statement of its key issues and submissions must address those issues.

Evidence and cross examination

25. Unless agreed by the Chair, evidence-in-chief should be no longer than 30 minutes.
26. An expert witness may present a summary of their evidence at the Hearing, but it must:
- a) not include new evidence
 - b) be filed by 12 noon the business day before that witness is scheduled to appear.
27. If giving evidence online, an expert witness must:
- a) be alone in the room from which they give evidence and not make or receive any communication with another person while giving evidence except with permission from the Committee
 - b) inform the Committee immediately should another person enter the room from which they are giving evidence
 - c) not discuss their evidence with any other person during breaks in evidence when under cross examination
 - d) not have before them any document, other than their expert witness report and relevant supporting documents.
28. A party, advocate and the Committee may question an expert witness.
29. If cross examining an expert witness, a party must:
- a) be present for the whole of the expert witness giving their evidence
 - b) ask clear and relevant questions, directed to matters of fact or professional opinion, that genuinely assist the Committee in understanding the issues
 - c) allow the expert witness time to explain their answer.

Notes

The Chair will regulate cross examination. During the Hearing, the Chair may ask you how much time you will need for cross examining each witness, and will ask you to keep to your estimate. You should aim to complete your cross examination as concisely as possible.

Cross examination time may be limited.

You may be asked to move on to another topic if the line of questioning is not useful to the Committee.

Things to avoid when cross examining include:

- making a submission or providing your opinion
- giving extensive comment or context as an introduction to your question
- asking questions that are unrelated to the evidence
- arguing with the witness
- commenting on the expert or the evidence
- asking questions that have already been asked by another party.

If you do not support the evidence or basis on which it was prepared, or consider the evidence should not be given weight, detail your reasons in your submission rather than raising these issues in cross examination.

If you are not experienced in cross examination, you are encouraged to write your questions down to ensure they are succinct, structured into themes and able to be asked without long explanations of the context.

For information on how to cross examine, refer to the [PPV Website](#).

Right of reply

30. Council and the Applicant will be provided time to present a right of reply that:
- a) must not raise new matters
 - b) may respond to matters raised in other parties' submissions or evidence.

Privacy and use of personal information

31. A party must not record, keep, distribute or publish contact details of any other party obtained during the Committee process, or use those contact details for any other purpose.
32. A party must not record any part of a Hearing by any means without permission from the Chair.
33. A party who wishes proceedings to be recorded must make a request to the Chair at least five business days before the Hearing commences, outlining its reasons.
34. If Planning Panels Victoria records a Hearing, any person provided with a copy of the recording must not publish or distribute that recording or use it for any purpose other than for the Committee process.

Note

Committee hearings are only recorded in exceptional circumstances.

For more information on how your personal information will be used, refer to the Privacy Collection Notice attached to the Committee's letter dated 30 April 2024.

The Committee reserves the right to make additional Directions during these proceedings.

Timetable

Priority Projects Standing Advisory Committee Referral 39
Victorian Civil and Administrative Tribunal Call-In – 47 South Road, Brighton

Document hub link

Documents are available online here: [REDACTED]

Timetable Version 1

Day 1: Tuesday 4 June 2024

Venue: Planning Panels Victoria, Hearing Room 1 (Ground Floor, 1 Spring Street, Melbourne) and online via MS Teams video conference: [Click here to join the meeting](#)

Time	Party	Allocated
10.00am – 10.15am	Preliminary matters	15 mins
10.15am – 10.45am	Golden Age LB Pty Ltd ATF GA South Road Development Unit Trust (Applicant) – Project Architect overview of the proposal	30 mins
10.45am – 11.15am	Bayside City Council (Council) opening submission	30 mins
11.15am – 11.30am	Tea break	15 mins
11.30am – 1.00pm	Applicant represented by Barnaby Chessell SC and Sean McArdle of Counsel, instructed by Dani Davidovits and Jarryd Gray of MinterEllison, calling the following expert evidence: <ul style="list-style-type: none">- Amanda Ring of UpCO in town planning- Jason Walsh of Traffix Group in traffic engineering- Lisa Howard of Taylor Cullity Lethlean in landscape architecture	1 of 2 days
1.00pm – 2.00pm	Lunch break	1 hour
2.00pm – 4.30pm	Applicant cont.	

Day 2: Wednesday 5 June 2024

Venue: Planning Panels Victoria, Hearing Room 1 (Ground Floor, 1 Spring Street, Melbourne) and online via MS Teams video conference: [Click here to join the meeting](#)

Time	Party	Allocated
10.00am – 10.15am	Preliminary matters	15 mins
10.15am – 1.00pm	Applicant cont.	2 of 2 days
1.00pm – 2.00pm	Lunch break	1 hour
2.00pm – 4.30pm	Applicant cont.	

Day 3: Thursday 6 June 2024

Venue: Planning Panels Victoria, Hearing Room 1 (Ground Floor, 1 Spring Street, Melbourne) and online via MS Teams video conference: [Click here to join the meeting](#)

Time	Party	Allocated
10.00am – 10.15am	Preliminary matters	15 mins

Timetable Version 1:
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10.15am – 1.00pm	Council represented by David Vorchheimer and Nick Sissons of HWL Ebsworth Lawyers, calling the following expert evidence: - Traffic engineering from John-Paul Maina of Impact Traffic - Urban design from Alastair Campbell of Hansen	1 day
1.00pm – 2.00pm	Lunch	15 mins
2.00pm – 4.30pm	Council, cont.	

Day 4: Tuesday 11 June 2024

Venue: Planning Panels Victoria, Hearing Room 1 (Ground Floor, 1 Spring Street, Melbourne) and online via MS Teams video conference: [Click here to join the meeting](#)

Time	Party	Allocated
10.00am – 10.15am	Preliminary matters	15 mins
10.15am – 11.15am	Council cont, if required	1 day
11.15am – 11.30am	Tea break	15 mins
11.30am – 12noon	Jonathan Altson (online)	30 mins
12noon – 1.00pm	Local Objector Group represented by Matthew Butler of Clement-Stone Town Planners, calling the following expert evidence: - Traffic from Mike Wilson of Amber Organisation	4 hours
1.00pm – 2.00pm	Lunch break	1 hour
2.00pm – 4.30pm	Local Objector Group cont.	2.5 hours

Day 5: Thursday 13 June 2024

Venue: Planning Panels Victoria, Hearing Room 1 (Ground Floor, 1 Spring Street, Melbourne) and online via MS Teams video conference: [Click here to join the meeting](#)

Time	Party	Allocated
10.00am – 10.15am	Preliminary matters	15 mins
10.15am – 11.15am	Local Objector Group cont.	4 hours
11.15am – 11.30am	Tea break	15 mins
11.30am – 12.30pm	Discussion of conditions (without prejudice)	60 mins
12.30pm – 1.30pm	Lunch break	1 hour
1.30pm – 2.00pm	Council right of reply	30 mins
2.00pm – 3.00pm	Applicant right of reply	60 mins
	END OF HEARING	

Hearing Timetable Notes:

1. If you are unable to be present at your scheduled time, please contact Planning Panels Victoria on Planning.Panels@delwp.vic.gov.au [REDACTED] as soon as possible.
2. Please be present or online at least 15 minutes before your scheduled start time.
3. The Committee may amend a Party's start time without notice. However you will be contacted in advance if you are to be rescheduled to a different day.
4. Time will be made for morning and afternoon breaks each day. Break times will be taken at appropriate points in the proceedings, and break times in the timetable are indicative only.
5. Getting to the Hearing venue – Planning Panels Victoria (corner Spring and Flinders Streets) is on the 75 and City Circle tram lines and a short walk from the Collins Street trams 109, 11, 12 and 48. It is also a short walk from Parliament Train Station.
6. If you have any questions about the timetable, please contact Planning Panels Victoria on Planning.Panels@delwp.vic.gov.au or [REDACTED]