



Planning Panels Victoria

Department of Environment, Land, Water and Planning

14 December 2021

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Telephone (03) 8624 5712

Dear Party,

VPA Projects Standing Advisory Committee Referral No. 6: Arden Structure Plan and draft Melbourne Planning Scheme Amendment C407melb

The Committee held a Directions Hearing for the above matter on 9 December 2021 by videoconference. Please find attached:

- Committee Directions
- Distribution List
- Hearing Timetable overview

The following dates apply:

Time	Date	Action	Direction
12 noon	Tuesday, 21 December 2021	Parties to advise witness details	1
12 noon	Tuesday, 21 December 2021	The VPA must provide the Committee with a plan showing the location of submitters including late submitters	2
12 noon	Tuesday, 21 December 2021	The VPA must make the listed document available	3
12 noon	Tuesday, 21 December 2021	The VPA must organise a document sharing platform	21
12 noon	Monday, 17 January 2022	The VPA must circulate its Part A submission	4
12 noon	Monday, 17 January 2022	The VPA must make the listed documents available	5
12 noon	Monday, 24 January 2022	The VPA must circulate expert witness reports	6
12 noon	Friday, 28 January 2022	Council must circulate expert witness reports	7
12 noon	Monday, 31 January 2022	Parties to provide list of key issues	8
12 noon	Monday, 7 February 2022	All other parties must circulate expert witness reports	9
10 am	Tuesday, 8 February 2022 to Wednesday, 9 February 2022	Hearing commences: VPA and Council opening statements	14a
10 am	Thursday, 10 February 2022 to Friday, 11 February 2022	Opening statements and submissions from parties requesting less than two hours (and not calling evidence)	14b
12 noon	Monday, 14 February 2022	Statements of agreed opinions and facts to be circulated	10
10 am	Wednesday, 16 February 2022	Opening statements from parties calling evidence	14c
10 am	Thursday, 17 February 2022 to Wednesday, 23 February 2022	Round table discussions by theme	15
10 am	Friday, 25 February 2022 to Friday, 4 March 2022	Evidence on unresolved issues	16
12 noon	Tuesday, 22 March 2022 to Friday, 25 March 2022	Closing submissions and VPA advice on changes	17 & 18a
12 noon	Monday, 4 April 2022	Parties file any additional or updated drafting changes	18b
12 noon	Friday, 8 April 2022	The VPA files a response to the requested drafting changes	18c

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Declarations

The Committee declared that Mr Hellsten and Mr Townsend were members of Bicycle Network who is a submitter to the Amendment. No issues were raised by parties.

Hearing process and dates

As reflected in the referral letter, the VPA proposed an alternative hearing arrangement with four phases including roundtable discussions before the testing of evidence. Not all parties supported this approach noting that it's intended efficiencies may be illusory, and that it potentially required longer attendance at the Hearings than a more traditional format.

The Committee has had recent experience with roundtable approaches and considers that in this instance the broad approach presented by the VPA (and supported by Council) is likely to result in a more efficient hearing process.

The Committee anticipates that the roundtables can be focused on a smaller number of issues based on the submissions of the parties:

- Strategic planning including policy, land supply and population targets
- Place making – land use and built form and design (including land use, height, open space, ESD/sustainability, heritage, affordable housing, proposed controls)
- Amenity – contamination, buffers, noise and odours
- Drainage – including land acquisition and arrangements for integrated water management and open space area
- Infrastructure – transport, development contributions plan and infrastructure delivery.

A number of parties raised issues with a range of timing constraints. The Committee has sought to balance the needs of the parties who sought more time to finalise evidence with the needs of the parties who are not able to delay their participation in this matter. The Committee notes that the dates of the Hearing were flagged in advance but not confirmed.

The Committee notes that Citywide Service Solutions Pty Ltd is publicly owned but does not exercise statutory duties. The Committee considers it should be treated in terms of the timing of the circulation of its evidence as a 'private' submitter.

The attached directions set out the hearing process and the proposed dates.

Documents sought

Council sought directions that five documents be produced by the VPA. These have been subject to correspondence between Council and the VPA. The documents and the Committee's response is as follows:

- *Peer review of Arden DCP* by Mesh. The Committee accepts that this was commissioned by the VPA legal team and not directly by the VPA. As such it does not form part of the material underpinning the Amendment and is subject to legal privilege. The document does not need to be released at this stage. The Committee is prepared to reconsider the status of the document if circumstances change, or if the VPA refers to it in its submissions.
- *Arden Structure Plan: Development Feasibility Assessment (VPA) 12 May 2020–Final Draft* by Ernst and Young. There was some confusion as to the precise document referred to. On the basis that the requested document informs the *Arden Built Form Testing 23 April 2021* prepared by Hayball, which is published as a background document to the Amendment, the Committee considers that it should be released.
- Built form testing by Breathe Architecture. The Committee accepts that this work was not completed to the satisfaction of the commissioning agencies and has not been relied on to support the Amendment. On this basis it does not need to be released.
- *Arden Concept Master Plan MGS 2018* and *Central City population and jobs narrative* SGS Economics and Planning. The Committee accepts that the VPA is not the owner of these documents but has made inquiries with the owners and will make these documents available

subject to the permission of the owners which it thinks will be forthcoming. The Committee notes that the owner is another government entity.

The Committee notes that access to Melbourne Water 'tuflow' flood modelling was sought by some parties; however, Melbourne Water as the owner of this information has chosen not to release it. The reasons provided by Melbourne Water for not releasing the modelling were explained orally by the VPA. The Committee accepts Melbourne Water's position.

If you have any questions about the timetable, please contact Ms Kimberly Martin, Senior Project Officer on (03) 8624 3266 or planning.panels@delwp.vic.gov.au

Yours sincerely,

A handwritten signature in black ink that reads "Lester Townsend". The signature is written in a cursive, slightly slanted style.

Lester Townsend
Committee Chair

Committee Directions

VPA Projects Standing Advisory Committee Referral No. 6: Arden Structure Plan and draft Melbourne Planning Scheme Amendment C407melb

Circulation of material

1. Parties who are intending to call expert evidence and have not yet provided witnesses details must provide the names and fields of expertise of their witnesses by **12 noon on Tuesday 21 December 2021**.
2. The VPA must provide the Committee with a plan showing the location of submitters identified by submitter number where these details are known by **12 noon on Tuesday 21 December 2021**. The plan should identify submitters by submitter number, and not by name. The Advisory Committee notes that submitter addresses were not required through the Engage Victoria portal and so have not been collected for all submissions. The resulting plan will, therefore, show only the location of submitters who provided address details.
3. The VPA must provide the following documents to parties on the distribution list by **12 noon on Tuesday 21 December 2021**.
 - a) *Arden Structure Plan: Development Feasibility Assessment (VPA) 12 May 2020 – Final Draft by Ernst and Young.*
4. The VPA must circulate a Part A submission to parties on the distribution list by **12 noon on Monday 17 January 2022** that includes:
 - a) background to the Amendment including chronology of events
 - b) strategic context and assessment
 - c) issues identified in submissions
 - d) an outline of any changes to the Amendment in response to submissions
 - e) any revised documents forming part of the exhibited draft Amendment.
5. The VPA must circulate to parties on the distribution list by **12 noon on Monday 17 January 2022**:
 - a) a Word version of the proposed Amendment suitably formatted and numbered
 - b) a table to facilitate the compiling of the changes sought to the exhibited material.
6. The VPA must circulate its expert witness reports to parties on the distribution list by **12 noon on Monday 24 January 2022**.
7. Council must circulate its expert witness reports to parties on the distribution list by **12 noon on Friday 28 January 2022**.
8. Any party who is allocated one hour or more on the timetable (to follow) must circulate a brief list (not exceeding 3 pages) outlining their key issues by **12 noon on Monday 31 January 2022**. Parties are encouraged to also file a document setting out the substance of changes which they seek to the draft planning controls, Arden Structure Plan or DCP. It is not necessary that such a document seek to be a legal draft.
9. Parties (other than VPA and Council) must circulate their expert witness reports to all parties on the distribution list by **12 noon on Monday 7 February 2022**.
10. Expert witnesses in like disciplines where the evidence is of a technical nature must meet to prepare a statement of agreed opinions and facts. The VPA expert should act as a Chair for the meeting and coordinate arrangements and note taking. Refer also to 'Meeting of experts' for directions below. Further directions may be issued once all experts are known. Expert witness conclave reports must be circulated to parties on the distribution list by the VPA expert by **12 noon on Monday 14 February 2022**.

Other information

11. Any other material a party wishes to present at the Hearing must be circulated to parties on the distribution list by **12 noon on the day before** the party presenting the material is due to be presented.

Directions:

12. After presenting to the Committee, submissions and other material (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 Committee directs otherwise.

Hearing phases

14. The first phase of the hearing will allow the perspectives of all parties to be ventilated and for submitters to identify their issues with the Amendment. There will be three parts to this:
 - a) VPA and Council opening statements (two days total, **Tuesday, 8 February 2022** and **Wednesday, 9 February 2022**)
 - b) Statements and submissions from parties requesting less than two hours (and not calling evidence) (two days total, **Thursday, 10 February 2022** and **Friday, 11 February 2022**)
 - c) Opening statements from parties calling evidence made following the meetings of experts. Opening statements must provide an overview of the party's case and position on issues, including the substance of changes sought to the Arden Structure Plan/DCP and draft Amendment (one day total, **Wednesday, 16 February 2022**).
 15. A roundtable phase will run from **Thursday, 17 February 2022** to **Wednesday, 23 February 2022**.
 - a) The Committee will identify the topics for the roundtables following opening statements from the VPA and Council, noting that this will also be with the benefit of the statement of issues lodged by parties.
 - b) No expert witnesses will be called during this phase of the hearing, and roundtables are not an opportunity to cross examine experts
 - c) The objective of the roundtable phase of the hearing is for the Committee to facilitate discussion of key issues raised in submissions with a view to identifying key differences of view, to explore possible resolution of matters and to document any solutions reached.
 - d) The roundtable discussions can be attended by any submitters but the Committee will focus discussions on key issues. Parties participating in the roundtable discussion may attend by representative, or officers, or experts (if any) irrespective of whether that expert is subsequently called to give evidence. Written submissions can be provided at the roundtable but should be structured by theme/sub theme and identify briefly their key position on the issue and any changes sought.
- Note: The Minister's letter of referral dated 14 November 2021 expressly excludes windfall gains tax implications, compensation matters related to the Land Acquisition and Compensation Act 1986 and business relocation assistance that may be provided by the government from the scope of the Minister's referral to the Committee.*
16. Expert witness evidence will be presented and tested from **Friday, 25 February 2022** to **Friday, 4 March 2022**
 - a) Expert witness evidence will be heard and tested by theme.
 - b) Expert evidence will only be permitted on matters that remain in dispute and to the extent that the evidence assists the Committee with issues that remain in dispute.
 - c) In relation to a particular theme, experts will provide their evidence in chief and any cross examination in the order of VPA, Council and other submitters, except with the leave of the Committee.
 - d) Evidence in chief must:
 - (i) must provide a summary of the expert's key conclusions.
 - (ii) must be limited to 20 minutes, except in the case of planning and urban design, which is limited to 40 minutes, unless with leave of the Committee.
 - (iii) may refer to a presentation which summarises their evidence, but it must:
 - not include new evidence
 - be provided to parties by 12 noon the day before that witness is scheduled to appear.
 - e) Cross examination of all witnesses:

Directions:

- (i) will follow evidence in chief of each witness on that topic.
 - (ii) will be limited to 30 minutes per submitter, per witness, unless with leave of the Committee.
- f) If cross-examining a witness, a party must:
- (i) be present for the whole of the giving of the evidence
 - (ii) ask clear and relevant questions, directed to matters of fact or professional opinion, that genuinely assist the Committee in understanding the issues
 - (iii) allow a witness time to explain their answer.
- g) If giving evidence remotely, a witness must:
- (i) 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 the express leave of the Committee
 - (ii) inform the Committee immediately should another person enter the room from which they are giving evidence
 - (iii) not discuss their evidence with any other person during breaks in evidence when under cross-examination
 - (iv) not have before them any document, other than their expert witness statement and relevant supporting documents.
17. Closing submissions will be made between **Tuesday, 22 March 2022** and **Thursday, 24 March 2022**:
- a) Any further written submission, and all material relied upon, must be filed no later than **12 noon on Monday, 21 March 2022**.
 - b) Further oral submissions to the Committee will be limited to the following times, unless with the leave of the Committee:
 - (i) VPA: 4 hours.
 - (ii) Council: 2 hours.
 - (iii) Other parties: 30 minutes.
 - c) Submissions at this stage of the hearing must:
 - (i) Clearly state the wording of any recommendation sought from the Committee.
 - (ii) Must attach a list of specific drafting changes sought to the Arden Structure Plan or associated documentation, cross referenced to the relevant submission number as itemised in the VPA submission summary table utilising the template form.
 - d) a right of reply at the close of submissions will be provided to
 - (i) Council limited to 1 hour except with the leave of the Committee.
 - (ii) The VPA limited to 2 hours except with the leave of the Committee.
18. Without prejudice drafting comments will be facilitated on the papers as follows:
- a) The VPA must circulate with its reply submissions, a table outlining the VPA's proposed changes to the draft Amendment (if any) and including columns for parties to confirm whether changes are agreed or to propose alternate wording.
 - b) Parties must file any additional or updated drafting changes in response to other parties' submissions by **12 noon on Monday, 4 April 2022**.
 - c) The VPA must file a response to the requested drafting changes, confirming only if changes are agreed to in whole or in part or not agreed, by **12 noon on Friday, 8 April 2022**.

Hearing administration

19. The VPA must host and manage a videoconference, if future COVID-19 restrictions prevent a Hearing using PPV hybrid facilities.

Circulation and sharing of documents

20. Documents must be circulated electronically to all parties on the Distribution list.

Directions:

21. The VPA must host and manage an online document sharing platform. The document sharing platform must be set up with a link provided to all parties by **12 noon on Tuesday 21 December 2021**
22. The VPA must upload circulated documents to the document sharing platform as soon as practicable or provide a mechanism for parties to upload directly.
23. Files should not exceed 20MB in size. Documents larger than 20MB should be broken down into smaller files less than 20MB.
24. File names should be as short as possible.
25. Paper documents will only be permitted in exceptional circumstances. If any party has issues supplying documents electronically, they should contact Planning Panels Victoria.

Witness reports

26. A witness report must:
 - a) comply with the 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 (*Note: it can refer to community groups, organisations, corporations and government agencies*)
 - c) be provided to the Committee as an unlocked document.
27. The VPA must publish all witness reports on a website.

Meeting of experts

28. The meeting(s) should be held:
 - a) at the discretion of the experts
 - b) by video or in person, as far as practicable, at a mutually convenient location
 - c) after the expert reports are circulated but before the Hearing commences.
29. The meeting(s) can only be attended by:
 - a) the experts being called to give evidence
 - b) a non-participating note taker if necessary
 - c) staff from relevant government agencies.
30. Advocates for parties instructing the experts must not attend the meeting(s).
31. The statement(s) of agreed opinions and facts should:
 - a) list the relevant experts in attendance, noting the experts present for any significant discussion point if some attendees are only there for part of the meeting
 - b) identify the key issues, including in relation to methodology, assumptions, results and interpretation of results
 - c) record the facts and opinions agreed and not agreed in respect of each issue and the reasons for any disagreement.
32. The statement(s) of agreed opinions and facts:
 - a) should not restate the evidence – where appropriate, that evidence should be cross-referenced in the agreed statement
 - b) should, if possible, be fewer than five pages
 - c) should have numbered paragraphs
 - d) must be signed by all participants

Directions:

e) must be circulated to parties on the distribution list by **12 noon on Monday 14 February 2021** (as per Direction 10).

33. If any expert witness directed by the Committee to meet with any other expert is instructed not to reach agreement in respect of points of difference, those instructions must be reported in writing to the Committee by the expert witness.

At the Hearing

Submissions and information

34. Parties must present material at the Hearing electronically.

35. Electronic information must be circulated to parties on the distribution list by 12 noon on the day before the information is to be presented at the Hearing.

36. All information presented at the Hearing is a public document for the purposes of the Committee process unless the Committee directs otherwise.

Recording Hearings and use of personal information

37. Parties must not record any part of an electronic hearing by any means without permission from the Committee.

38. In exceptional cases, the Chair may direct that the Hearing be recorded. A party who wishes proceedings to be recorded must make a request to the Committee at least five business days before the commencement of the Hearing, outlining its reasons.

39. If Planning Panels Victoria records an electronic hearing, any party provided with a copy of the recording on request must not publish or distribute that recording or use it for any purpose other than for the Hearing.

40. Parties must not record, keep, distribute or publish contact details of any other party obtained in the course of an electronic hearing session, or use those contact details for any purpose other than for the Hearing.

Compliance with Committee directions

41. All directions must be complied with. It is an offence to not comply with a direction without lawful excuse. [section 169 of the *Planning and Environment Act 1987*]

42. If you anticipate being unable to comply with a direction (for example, meeting a deadline for the circulation of evidence), you must provide the Committee with advance notice, and a written statement explaining why you are unable to comply with the direction, and seek leave from the Committee to vary the direction.

43. The Committee may:

a) refuse to hear from anyone who fails to comply with a direction. [section 159(b)]

b) not accept evidence if leave to vary a direction for the circulation of evidence is not sought or granted.

Timetable

VPA Projects Standing Advisory Committee Referral No. 6: Arden Structure Plan and draft Melbourne Planning Amendment C407melb

Timetable Version 1

A more detailed timetable will be prepared following advice on witnesses.

The timing of submissions from the EPA is yet to be determined, acknowledging that it needs time to respond to technical evidence.

The timing of submission from North Melbourne Football Club (NMFC) (Submission 82) is yet to be determined pending further advice on witness and time required from the submitter.

Tuesday, 8 February 2022 to Friday, 11 February 2022

Opening statements from VPA and Council and submissions from parties requesting less than two hours:

Submission No.	Party name
50	Melbourne Archdiocese Catholic Schools
54	Housing Industry Association (HIA)
57	The Lost Dogs Home
66	North and West Melbourne Association
74	David Koetsier
78	Friends of Moonee Ponds Creek Inc
83	Gracie Street Holdings Pty Ltd
104	George Weston Foods Limited

Wednesday, 16 February 2022

Opening statements from parties calling evidence:

Submission No.	Party name
73	Guntar Graphics Pty Ltd, Champion Parts Proprietary Limited, I & J Group Holdings Pty Ltd and Belborant Pty Ltd
99	Citywide Service Solutions Pty Ltd
100	Rockford Constant Velocity Pty Ltd
102	Nithe Pty Ltd; 199 Arden Street Pty Ltd; N&C Theodossi Investments No.4 Pty Ltd; Theodossi Family Pty Ltd; Buton Pty Ltd; Cars by Nicole Pty Ltd; N&C Theodossi Investments No. 2 Pty Ltd; N&C Theodossi Investments Pty Ltd
103	RSA Holdings Pty Ltd

Thursday, 17 February 2022 to Wednesday, 23 February 2022

Round table discussions by theme

Friday, 25 February 2022 to Friday, 4 March 2022

Evidence on unresolved issues

Tuesday, 22 March 2022 to Friday, 25 March 2022

Closing submissions and written advice on changes or recommendations sought