

**FISHERMANS BEND PLANNING REVIEW PANEL: DRAFT AMENDMENT  
GC81**

**SUPPLEMENTARY INFORMATION NOTE**

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<b>SIN NUMBER:</b>	5
<b>DATE:</b>	28 March 2018
<b>PRECINCT:</b>	All
<b>FRAMEWORK REFERENCE:</b>	N/a
<b>SUBJECT:</b>	Application of the Public Acquisition Overlay and the relationship with s 201I of the <i>Planning and Environment Act 1987</i> in Fishermans Bend
<b>NOTE:</b>	N/A
<b>REQUEST:</b>	The Panel has requested further information regarding the application of the Public Acquisition Overlay to land in Fishermans Bend and the application of s 201I of the <i>Planning and Environment Act 1987</i>

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**RESPONSE:**

**Effect of declaration of Fishermans Bend under s 201F of the *Planning and Environment Act 1987***

1. The Panel has requested further information regarding the application of the Public Acquisition Overlay to land in Fishermans Bend and the application of s 201I of the *Planning and Environment Act 1987* (**PE Act**).
2. Section 4(1) of the *Land Acquisition and Compensation Act 1986* (**LACA**) provides:
  - (1) The Authority must not commence to acquire any interest in land under the provisions of the special Act unless the land has been first reserved by or under a planning instrument for a public purpose.
3. Section 4B of the LACA provides:
  - (4B) Sub-section (1) does not apply to any land which is special project land under section 201I(3) of the *Planning and Environment Act 1987*.
4. Section 201E(3) provides that the Minister may, by notice published in the Government Gazette, declare specified land required for a declared project to be special project land for the purposes of section 5 of the LACA.
5. A declared project is a development declared by notice under section 201F to be of State or regional significance (s201E definitions).

6. On 5 July 2012, by notice published in the Victorian Government Gazette, the former Minister for Planning issued a 'Notice for Declaration of Project under Section 201F' of the PE Act.
7. Pursuant to that notice, the Minister:
  - ....declare(d) the project to be a development of State significance.
  - In this notice, the 'Project' means the 'Fishermans Bend Urban Renewal Area' as shown on the map below and will relate to the large scale urban renewal project incorporating a mix of land uses including residential, commercial, retail, industrial, recreation, education, entertainment and community uses.
8. A copy of that declaration, which includes a map of the relevant area (which excludes the Employment Precinct), is **Attachment 1**.
9. Section 201I provides that the Secretary may compulsorily acquire land for the purposes of a declared project. For the purpose of undertaking a compulsory acquisition, including the assessment of compensation, the provisions LACA applies and Part 9A of the PE Act is the 'special act' and the Secretary is the Authority (s 201I(2)).
10. Section 201J provides the Secretary broad powers to dispose of land including the power to sell or dispose of any land on any terms that the Secretary considers appropriate (s 201J(1)) and to enter into agreements concerning the use and development of land (s201J(2)).

### **Acquisition by Agreement**

11. The Secretary may also acquire land by agreement.
12. Section 201H provides a broad power to the Secretary to acquire land within the declared project area by agreement:
  - For the purposes of a declared project, the Secretary may acquire land by agreement on any terms (including consideration) that the Secretary considers appropriate.
13. This broad power provides the Secretary (defined in s 201R as the body corporate established under s 41A of the *Project Development and Construction Management Act 1994*) with the power to acquire land for public open space and roads within the declared project area by agreement and in the absence of a reservation of that land for public purposes by the imposition of a PAO.
14. The Secretary could, for example, seek to secure land by agreement in return for measures directed to achieving outcomes contained in the draft Framework. Section 201G allows the Secretary to delegate its powers including the powers of acquisition to any person employed by the Department. The PE Act defines Department by reference to any name of the administering department as changed by notice in the Government Gazette.<sup>1</sup>

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<sup>1</sup> Effective from 1 January 2015 pursuant to s 3(2) of the P & E Act, the name of the Department of transport, Planning and Local Infrastructure was changed by order under s 10 of the *Public Administration Act 2004* to the Department of Environment, Land, Water and Planning (Victorian Government Gazette S432 dated 4 December 2014, page 1).

15. Section 201J provides the Secretary the power to sell or transfer land on any conditions it sees fit, to grant a lease, license, easement or privilege over land vested in or acquired by the Secretary; or to sell or dispose of the Secretary's interest in fee simple in any land vested in or acquired by the Secretary pursuant to Part 9A of the PE Act (projects of State Significance) on any terms, including consideration, that the Secretary considers appropriate. Therefore land obtained by the Secretary could be transferred to the responsible authority.

### **Compensation for removal of restrictions and easements and closure of roads**

16. For the purposes of a declared project, the Secretary may recommend to the Governor in Council to remove an easement, or restriction applying to any land (s 201N) and on publication of an order in the Government Gazette the restriction or easement is extinguished (s 201O).
17. For the purposes of a declared project, the Secretary may recommend to the Governor in Council to close any road or part of a road (s 201K). On publication of an order in the Government Gazette a road or part of a road may be closed (s 201L). A road may also be closed on a temporary basis if the Secretary considers it necessary to do so that works on the road or neighbouring land can be carried out (s 201M).
18. If an order made under s 201O (removal of an easement or restriction) or s 201L (closure of roads) s 201P requires the Secretary to make provision for the payment of compensation:
  - (a) to any person in whom the land comprised in the road or part of the road is vested; and
  - (b) to any owner of property which in the opinion of the Secretary is likely to be substantially affected by the closure of the road or the removal of the easement or restriction.
19. Pursuant to s 201(2) the Minister may certify that, having regard to the extent to which a person is or is likely to be affected by the closure of the road or the removal of the easement or restriction, the compensation payable to that person should not exceed the amount stated in the certificate (not being less than \$400) and the amount stated in the certificate will be the full amount payable by the Secretary by way of compensation (s 201P(3)).
20. If the Minister does not certify the compensation payable, the compensation payable under subsection (1) is to be agreed between the Secretary and the affected person. If agreement is not reached, compensation will be determined in accordance with Part 10 of the LACA as if the amount of compensation payable were a disputed claim (s 201P(5)).

### **Declaration of proposed reservation if value of the land may be substantially affected by reservation for public purposes**

21. Section 223 provides that the Minister administering the *Land Acquisition and Compensation Act 1986* may declare land to be proposed to be reserved for public purposes if the Minister is satisfied that the value of the land may be

substantially affected by a proposal to reserve or which could lead to the reservation of land for public purposes; and considers that it is appropriate that the land should be so declared.

22. The power under s 223 of the PE Act was not exercised in respect of Fishermans Bend before the area was rezoned to Capital City Zone in 2012.

### **Certificate of underlying zoning**

23. Section 201 of the PE Act allows an affected person to apply for a certificate as to the underlying zoning of land to be provided for the purpose of ascertaining the compensation payable in respect of land which has been reserved for a public purpose.
24. There are a number of requirements before a certificate of underlying zoning may be issued:
  - a. a planning certificate must state that the land is wholly or partly reserved for *public purposes under the planning scheme*; and
  - b. the certificate does not indicate the provisions of the scheme which would have applied to the land if the land had not been reserved.
25. If those requirements are met an application may be made for the purpose of valuing land for compensation to the person nominated for the purpose of section 198 (the person nominated in the scheme for that purpose and if no person is nominated the responsible authority) for a declaration setting out the provisions of the scheme which would have applied to the land if it had not been reserved.
26. In the absence of the an imposition of a Public Acquisition Overlay (**PAO**) on land under the relevant planning scheme, s 201 of the PE Act is unlikely to be of assistance in ascertaining land values for the purpose of acquisition in Fishermans Bend.
27. In Victoria reservation of land for the purpose of acquisition occurs by the application of the PAO (which is the VPP tool for reserving land under the PE Act). By operation of clause 45.01-6, land which is affected by the PAO is land “designated as being reserved for public purposes” within the meaning of s 6(2)(c) of the PE Act.

If land is not the subject of a PAO, then as a consequence of the proper construction of s 6(2) of the PE Act and clause 45.01, it is not “reserved” land and a certificate under s 201 could not issue.

### **ATTACHMENTS:**

1. Declaration of Fishermans Bend as an area of State Significance dated 5 July 2012.