

KELLEHERS AUSTRALIA

In-House Memorandum

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Planning Panels – What They Hear

Planning panels are *advisory* in nature. Their recommendations do not bind a planning authority. During a hearing, a panel has authority to inquire into all aspects of a planning scheme amendment, and must follow a 'general procedure for hearings'¹. The Panel:

- must act according to equity and good conscience without regard to technicalities or legal forms;
- is bound by the rules of natural justice;
- is not required to conduct the hearing in a formal manner; and
- is not bound by the rules or practice as to evidence but may inform itself on any matter in any way it thinks fit and without notice to any person who has made a submission².

The P&E Act gives the Panel very broad discretion as to the hearing of submissions³. Persons who wish to be heard at panels must complete a 'Request To Be Heard' form or it will be assumed they do not wish to appear. Requests to be heard by interested parties who did not make a submission to the exhibited scheme are decided by the Panel:

*"As a general rule, if a person has not made a written submission, they will not be heard. The Panel has no obligation to hear them, although it may choose to do so by exercising its power under Section 161(1)(d) [P&E Act].... It should not be assumed that the Panel will decide to exercise that discretion."*⁴

The Panel may hear lay and expert evidence. Notice of expert evidence is required in advance with reports required prior to hearing.

The Planning Panels Guide contains no indication that notice of lay evidence must be given, or that a statement by a lay witness must be circulated, prior to the hearing. It seems that lay witnesses *can* be called without any prior notice of their evidence. The Panel's 'Request to Be Heard' Form asks: "Will you be calling *expert* witnesses?" [emphasis added]. It requires each expert's name and field of expertise to be inserted, but makes no provision for lay witnesses' details. In practice, at least one Panel has been advised in advance of an intention to call a lay witness prior to hearing⁵.

A panel may hear evidence from any person who has made a submission⁶. Evidence may be given to the panel orally or in writing or partly orally and partly in writing⁷. The panel may regulate cross-examination.

Cameron Algie
8 September 2014

¹ *Planning and Environment Act 1987* (Vic), s161.

² *Ibid.*

³ *Ibid.*, s167: 'A panel may regulate its own proceedings'; *Ibid.*, s168: 'A panel may take into account any matter it thinks relevant'.

⁴ <http://www.dpcd.vic.gov.au/planning/panelsandcommittees/guides-and-faqs#nosub>, accessed 11/8/14

⁵ Lay witnesses are recorded to have appeared after prior notice in Strathbogie C25 [PPV 72], Warrnambool C57 [PPV 137], Greater Geelong C93 [PPV 58] and in Moonee Valley C25 [PPV 11].

⁶ *Planning and Environment Act 1987* (Vic), s24(a).

⁷ *Planning and Environment Act 1987* (Vic), s161.